

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE CITY AND COUNTY OF SAN FRANCISCO  
THE PEOPLE OF THE STATE OF CALIFORNIA; AMERICAN CANCER SOCIETY, CALIFORNIA DIVISION; AMERICAN HEART ASSOCIATION, CALIFORNIA AFFILIATE; and CALIFORNIA MEDICAL ASSOCIATION; and CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS,

Plaintiff,

vs.

PHILIP MORRIS, INCORPORATED;  
R.J. REYNOLDS TOBACCO COMPANY;  
BROWN & WILLIAMSON TOBACCO CORPORATION; B.A.T. INDUSTRIES, P.L.C.; LORILLARD TOBACCO COMPANY;  
THE AMERICAN TOBACCO CO;  
THE COUNCIL FOR TOBACCO RESEARCH-U.S.A., INC.; and THE TOBACCO INSTITUTE, INC.; and DOES 1-100, inclusive,

Defendants.

VIDEOTAPE DEPOSITION

OF

VICTOR D. LINDSLEY

At Greensboro, North Carolina  
June 9, 1998 - 9:09 a.m.

Reported by:  
Edie B. Chiavatti  
AOC Certified

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## APPEARANCES

For the Plaintiff: Pierce Gore  
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San Francisco, California 94111

For the Defendants: William J. Crampton  
Gay L. Tedder  
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Kansas City, Missouri 64105  
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Assoc. General Counsel, Litigation  
LORILLARD  
Post Office Box 10529  
Greensboro, North Carolina 27404

Also Present: Amy L. Poythress  
Legal Video Services  
Gregory T. Arnold  
BROWN RUDNICK FREED & GESMER  
One Financial Center  
Boston, Massachusetts 02111

## STIPULATIONS

- 1
- 2 It is hereby stipulated and agreed
- 3 between the parties to this action, through their
- 4 respective counsel of record:
- 5 1. The deposition of VICTOR D.
- 6 LINDSLEY may be taken on June 9, 1998, beginning
- 7 at 9:09 a.m. in the law offices of BROOKS PIERCE
- 8 MCLENDON HUMPHREY & LEONARD located at 320 North
- 9 Elm Street, Suite 2000, Greensboro, North
- 10 Carolina, before Edie B. Chiavatti, an AOC
- 11 Certified Verbatim Reporter and Notary Public.
- 12 2. Said deposition shall be taken for
- 13 the purpose of discovery or for use as evidence
- 14 in the above-entitled action, or for both
- 15 purposes.
- 16 3. Any objections of any party hereto
- 17 as to notice of the taking of said deposition or
- 18 as to the time or place thereof, or as to the
- 19 competency of the person before whom the same
- 20 shall be taken are deemed to have been met.
- 21 4. The Federal Rules of Civil
- 22 Procedure shall control the taking of said
- 23 deposition and the use thereof in court.
- 24 5. Objections to questions and motions
- 25 to strike answers need not be made during the

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1 taking of this deposition but may be made for the  
2 first time during the progress of the trial of  
3 this case or at any pretrial hearing held before  
4 any federal court judge for the purpose of ruling  
5 thereon, or at any other hearing of said case at  
6 which said deposition might be used, except that  
7 an objection as to the form of a question must be  
8 made at the time such question is asked or  
9 objection is waived as to the form of the  
10 question.

11 6. The original of this deposition  
12 will be sealed in an envelope and mailed  
13 first-class postage or hand-delivered to the  
14 party taking the deposition for preservation and  
15 delivery to the court if and when necessary.

16 7. The deponent does not waive the  
17 right to examine and sign the deposition prior to  
18 filing.

19  
20 VIDEOGRAPHER: Today is Tuesday,  
21 June 9, 1998. This is the videotaped  
22 deposition of Victor D. Lindsley.  
23 We're in Greensboro, North Carolina, at  
24 the law offices of Brooks Pierce  
25 McLendon Humphrey & Leonard located at

1 2000 Renaissance Place.  
2 This is the case of the People of  
3 the State of California, et al., versus  
4 Philip Morris, Inc., et al., in the  
5 Superior Court of the State of  
6 California for the City and County of  
7 San Francisco, Civil Action No. 980864.

8 The court reporter is Edie  
9 Chiavatti of Capital Reporting in  
10 Raleigh, North Carolina. The  
11 videographer is Amy Poythress of Legal  
12 Video Services of Raleigh, North  
13 Carolina.

14 We're on the record at 9:09 a.m.  
15 If counsel will please state their  
16 appearances.

17 MR. GORE: Pierce Gore of Lief  
18 Cabraser Heimann & Bernstein in San  
19 Francisco for plaintiffs, People of the  
20 State of California.

21 MR. ARNOLD: Greg Arnold from  
22 Brown Rudnick Freed & Gesmer in Boston  
23 for the Commonwealth of Massachusetts.

24 MR. CRAMPTON: Bill Crampton,  
25 Shook Hardy & Bacon in Kansas City

1 representing Lorillard Tobacco Company.  
2 MS. TEDDER: Gay Tedder, Shook  
3 Hardy & Bacon in Kansas City  
4 representing Lorillard Tobacco Company.  
5 MR. REILLY: John Reilly, Associate  
6 General Counsel Litigation, Lorillard  
7 Tobacco Company in Greensboro, North  
8 Carolina.

9 VIDEOGRAPHER: And if the court  
10 reporter would please swear in the  
11 witness.

12 Whereupon,

13 VICTOR D. LINDSLEY  
14 having first been duly sworn, was examined and  
15 testified as follows:

16 DIRECT EXAMINATION BY MR. GORE:

17 MR. GORE: Before I start  
18 questioning Mr. Lindsley, we had a  
19 brief conversation off the record about  
20 our proposed stipulation that we may  
21 use in this case and at trial, if  
22 necessary. The testimony Mr. Lindsley  
23 has given in two prior depositions, one  
24 taken in the litigation by the state of  
25 Minnesota and the other case which I

1 think we have referred to as the Arch  
2 case, and so I want to make sure that I  
3 have your agreement on the record to  
4 that stipulation.

5 MR. CRAMPTON: We agree.

6 MR. GORE: All right. Thank you.

7 Q: Good morning, Mr. Lindsley.

8 A: Good morning.

9 Q: You are here today for this deposition  
10 pursuant to a notice that was served by my  
11 firm on Lorillard. I'm going to give you a  
12 copy of this notice and ask that the copy  
13 that I provided to the court reporter  
14 yesterday -- actually that one is for you --  
15 be marked as Exhibit No. 1.

16 [PLAINTIFF'S DEPOSITION EXHIBIT NO. 1  
17 MARKED FOR IDENTIFICATION]

18 Q: Please take a moment to review it, and let  
19 me know when you've had a chance to look it  
20 over.

21 [WITNESS EXAMINES DOCUMENT]

22 Q: Are you ready?

23 A: I'm ready.

24 Q: Have you seen that document before?

25 A: Yes, I have.

1 Q: When did you see it?  
2 A: About a week ago.  
3 Q: Under what circumstances did you see it?  
4 A: With my attorneys here.  
5 MR. CRAMPTON: Don't tell him any  
6 more about any meetings that you had  
7 with counsel when counsel is giving you  
8 advice in connection with this  
9 deposition. That is different than an  
10 instruction that I would give him if --  
11 any meetings he had in preparation,  
12 gathering information for the testimony.  
13 MR. GORE: Agreed.  
14 Q: I don't want to know about communications  
15 that you had with your counsel. I want to  
16 make sure that you were informed by someone  
17 that you have been designated by Lorillard as  
18 the person most knowledgeable on a number of  
19 topics that are listed in this deposition  
20 notice. Do you understand that?  
21 A: Yes, I do.  
22 Q: Do you also understand, sir, that the  
23 deposition that was taken yesterday is a  
24 separate deposition from the one that we are  
25 taking today?

1 A: Yes, I do.  
2 Q: The deposition yesterday was one taken in  
3 the course of an action pending in  
4 Massachusetts whereas today's deposition, as  
5 you can see from this caption, relates to an  
6 action pending in California. Do you  
7 understand that?  
8 A: Yes, I do.  
9 Q: You also understand that you are under oath,  
10 as yesterday, and the same guidelines as far  
11 as testifying truthfully, listening carefully  
12 to the questions are still in effect? Do you  
13 understand that?  
14 A: Yes, I do.  
15 Q: I want to also state that from time to time  
16 your counsel will make objections to my  
17 questions. Those objections are to preserve  
18 the record because there's no judge here  
19 today to rule on any of those objections;  
20 but unless your counsel instructs you not to  
21 answer the question, then you have an  
22 obligation to go ahead and answer it  
23 provided you understand the question. Do  
24 you understand that?  
25 A: Yes, I do.

1 Q: Thank you. Did you do anything to prepare  
2 for this deposition today?  
3 A: Yes, I have.  
4 Q: What did you do?  
5 A: I have met with my attorneys on occasion. I  
6 have met with other people at Lorillard on  
7 two separate occasions as well.  
8 Q: On how many occasions did you meet with your  
9 attorneys?  
10 A: I'd say I met a total of four times. Not  
11 with them all together, though. Separate.  
12 On different occasions with different people.  
13 Q: I understand. Over what period of time?  
14 A: Over a period of approximately three weeks.  
15 Q: And what three weeks would those be?  
16 A: The prior three weeks to this one.  
17 Q: Three weeks preceding today?  
18 A: Yes.  
19 Q: The other people at Lorillard that you  
20 discussed your deposition with, who are those  
21 people?  
22 A: Are you asking for names?  
23 Q: Yes.  
24 A: Okay. The three people I had spoken with  
25 would be Keith Faircloth, Patricia

1 Nichalsaisen and Kathy Sparrow.  
2 MR. CRAMPTON: Just for your  
3 information, he testified on this  
4 yesterday.  
5 MR. GORE: I understand. I want  
6 to make sure. I have just a few  
7 details that I was unclear about from  
8 yesterday.  
9 Q: What is Mr. Faircloth's position at Lorillard?  
10 A: He is a brand promotion manager.  
11 Q: For a particular brand?  
12 A: Yes, for a particular brand.  
13 Q: What brand is that?  
14 A: That brand is Newport cigarettes.  
15 Q: Is he your superior or subordinate or some  
16 other relationship to you within the company?  
17 A: Subordinate.  
18 Q: On how many occasions did you meet with Mr.  
19 Faircloth to discuss your deposition?  
20 A: Just once.  
21 Q: When was that?  
22 A: Two weeks prior to this one.  
23 Q: How long did the meeting last?  
24 A: Approximately 15 minutes.  
25 Q: What did you talk about?

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<p>1 A: We talked about whether or not we could find 2 expenditures on a state-by-state basis for 3 the area promotion. 4 Q: Talk about anything else? 5 A: No, that was it. 6 Q: What is Ms. Nichalsaisen's position at 7 Lorillard? 8 A: Pat Nichalsaisen is the director of media. 9 Q: For a particular brand? 10 A: No, for all of Lorillard's products. 11 Q: Is she your superior, subordinate or some 12 other relationship to you within the company? 13 A: Subordinate. 14 Q: On how many occasions did you meet with Ms. 15 Nichalsaisen? 16 A: Once as well. 17 Q: When was that? 18 A: Also the same day two weeks prior to this. 19 Q: How long did you meet with her? 20 A: About 15 minutes as well. 21 Q: What did you talk about? 22 A: Our meeting was the purpose -- for the 23 purpose of also finding out whether or not 24 specific expenditures were available on a 25 state-by-state basis.</p>	<p>1 A: In just a few cases for current years, yes, 2 but not in every case for a long time. 3 MR. GORE: Has that information 4 been produced to us in some form or -- 5 MR. CRAMPTON: He's talking about 6 those exhibits from yesterday. 7 Q: Is that what we're talking about? 8 A: I'm talking about the exhibits from yesterday 9 that deal with merchandising, but also the 10 area of the outdoor advertising expenditures 11 which were things that we recently recovered. 12 MR. CRAMPTON: Right. Those are 13 the documents that we talked about that 14 we just found on Friday that we're 15 gathering up to produce to you. 16 MR. GORE: Okay. 17 Q: Before I ask about those, when you say the 18 documents that we were talking about 19 yesterday, just to be clear on the record, 20 you're referring to the merchandising 21 overviews that we marked as Exhibits 2 and 22 3, is that correct? 23 A: Yes, sir. 24 Q: Thank you. The documents that you're 25 putting together to produce to us, do you</p>
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<p>1 Q: What is Kathy Sparrow's position at Lorillard? 2 A: Kathy Sparrow is the director of sales and 3 information planning. 4 Q: On how many occasions did you meet with her 5 to discuss your deposition? 6 A: Just once as well. 7 Q: When was that? 8 A: Two weeks prior to this as well. 9 Q: How long did the meeting last? 10 A: Also about 15 minutes. 11 Q: What did you talk about? 12 A: We talked specifically about whether or not 13 we had in our files detailed explanations of 14 Lorillard's merchandising plans since 1952 15 and also whether or not those expenditures 16 could be broken down on a state-by-state 17 basis. 18 Q: As a result of your meeting with Ms. Sparrow 19 and any checking and investigation that was 20 done after that, did you come to any sort of 21 determination as to whether you could in 22 fact put together that information that 23 you've just described? 24 A: Yes, we did. 25 Q: Were you able to put that together?</p>	<p>1 have an update or a rough time table on that? 2 MR. CRAMPTON: Well, what we're 3 talking about is certainly less than a 4 box of documents for Massachusetts and, 5 similarly, less than a box of documents 6 for California. They have some 7 breakouts of annual expenditures for 8 outdoor advertising for given years. 9 It's not complete. It's not something 10 that was routinely done by the company, 11 but there are a few instances where it 12 appears to have been done and we've got 13 that. 14 And there are also some -- I 15 think they're contracts with outdoor 16 billboard companies for placement of 17 billboards in various locations 18 including California and Massachusetts. 19 MR. GORE: Okay. 20 MR. CRAMPTON: Those have now been 21 gathered, and they're being sent to 22 Kansas City to be copied and number 23 stamped and all of that and produced to 24 you. It shouldn't take very long. 25 MR. GORE: Okay. Do you want to</p>

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1 go off the record just briefly for a  
2 moment and talk about that?  
3 VIDEOGRAPHER: Off the record at  
4 9:21.  
5 [DISCUSSION HELD OFF THE RECORD]  
6 VIDEOGRAPHER: On the record at  
7 9:24.  
8 MR. GORE: We have had a brief  
9 discussion off the record about the  
10 documents that Lorillard is presently  
11 preparing to be produced to the  
12 plaintiffs in both the California and  
13 Massachusetts actions; and with respect  
14 to those documents, I think I'm  
15 speaking for both Mr. Arnold  
16 representing the Commonwealth of  
17 Massachusetts and myself in reserving  
18 the right, if necessary, to recall Mr.  
19 Lindsley to depose him as to the  
20 content of those documents because they  
21 were not available to us prior to this  
22 deposition.  
23 MR. CRAMPTON: The only thing  
24 that I would say is that Friday of last  
25 week when we found the documents, we

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1 contacted counsel for both the State of  
2 California and Commonwealth of  
3 Massachusetts and informed them about  
4 it, asked if they wanted to proceed now  
5 before we had a chance to get those  
6 documents together or whether they  
7 wanted to wait until we could get them  
8 put together.

9 Both states chose to go forward,  
10 so we reserve the right to object to  
11 any further deposition of Mr. Lindsley  
12 as to those documents. Yeah, also  
13 there is a 12-hour limit for  
14 depositions in Massachusetts. Although  
15 12 hours weren't used, there will be --  
16 I think the 12-hour limit would apply  
17 to both this and any future deposition  
18 of Mr. Lindsley.

19 MR. ARNOLD: I don't follow that.

20 MR. CRAMPTON: Well, the --

21 MR. ARNOLD: It was a Class II  
22 deposition.

23 MR. CRAMPTON: Right. So there's  
24 a total of 12. Any future deposition --

25 MR. ARNOLD: On those documents.

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1 MR. CRAMPTON: -- would be added  
2 to this one, and there would not be  
3 more than a total of 12 hours.  
4 MR. ARNOLD: Would be added to  
5 yesterday's?  
6 MR. CRAMPTON: Yes. I'm sorry.  
7 Yesterday's deposition.  
8 Q: (By Mr. Gore) Other than meeting with your  
9 attorneys and Mr. Faircloth, Ms. Nichalsaisen  
10 and Ms. Sparrow, did you meet with anyone  
11 else to prepare for your deposition?  
12 A: I did not.  
13 Q: Did you discuss your deposition with anyone  
14 else?  
15 A: I did not.  
16 Q: Did you review any documents to prepare for  
17 your deposition?  
18 A: Yes, I did.  
19 Q: What documents did you review?  
20 A: The documents that were prepared by Keith  
21 and Pat and then by a gentleman by the name  
22 of Bob Calderella and also Leo Weber.  
23 Q: Who is Bob Calderella?  
24 A: Bob Calderella is the director of  
25 merchandising.

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1 Q: At Lorillard?  
2 A: Yes.  
3 Q: Who is Leo Weber?  
4 A: The director of trade relations at Lorillard  
5 as well.  
6 Q: Do all of these individuals -- or the one,  
7 two, three, four, five individuals that  
8 you've mentioned, Faircloth, Nichalsaisen,  
9 Sparrow, Calderella and Weber -- do they all  
10 work at Lorillard here in Greensboro?  
11 A: Yes, they do.  
12 Q: Is it correct you reviewed some documents  
13 that had been prepared or assembled by Mr.  
14 Calderella?  
15 A: Yes, I did.  
16 Q: What documents are those?  
17 A: The documents that you have there that are  
18 Exhibit 2 and 3 from yesterday.  
19 Q: Did Mr. Calderella prepare those documents?  
20 A: Yes, he did.  
21 Q: Is it accurate to say that Exhibits 2 and 3,  
22 which are Lorillard merchandising overview,  
23 one for January 1975 through June 1997 --  
24 that's Exhibit 2, and Exhibit 3 is the  
25 current merchandising program. Were these

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<p>1 two documents prepared for the purpose of 2 your deposition? 3 A: I believe they were. 4 Q: They did not exist prior to your beginning 5 preparation for this deposition? 6 A: Not in that form. 7 Q: Are they summaries of information contained 8 or gleaned from other documents? 9 A: Most likely pages in there were taken in 10 totality from other documents and put 11 together into one. 12 Q: When you say "most likely," is that based 13 upon your conversations with Mr. Calderella? 14 A: No, that's not. That's based on my judgment 15 in terms of where they got those documents 16 from and what I've seen in the past. 17 Q: Mr. Leo Weber, what was his role in your 18 preparation for your deposition? 19 A: He also passed on a similar document dealing 20 with direct account programs. 21 Q: Is that document part of Exhibits 2 and 3? 22 A: No, it is not. 23 Q: Can you describe this document for me? 24 A: Yes, this document would be again similar to 25 this where it lays out a description of our</p>	<p>1 A: It was given to me as one document, yes. 2 Q: Why don't we staple it together and mark it 3 as Exhibit 2 to this deposition, please. 4 [PLAINTIFF'S DEPOSITION EXHIBIT NO.2 5 MARKED FOR IDENTIFICATION] 6 MR. CRAMPTON: I have other 7 things here that he has looked at, 8 although I don't know to what extent. 9 I could also produce those to you and 10 give you a chance to look at them in 11 case you want to ask any questions on 12 them. 13 MR. GORE: Okay. I think that's 14 a good idea. 15 MR. CRAMPTON: It appears that 16 there's a one-page document, 94419700. 17 MR. GORE: Let's mark this as 18 Exhibit No. 3. 19 [PLAINTIFF'S DEPOSITION EXHIBIT NO.3 20 MARKED FOR IDENTIFICATION] 21 MR. CRAMPTON: There's another 22 one bearing the numbers 94419706 -- 23 it's actually three pages long. The 24 second page is 94419707, and the third 25 page, which appears to be out of order,</p>
Page 22	Page 24
<p>1 direct account programs from 19 -- I believe 2 early 1980 up until present. 3 Q: Did you review that document in preparing 4 for your deposition? 5 A: Yes, I did. 6 Q: How long is that document? 7 A: Oh, the document might be three pages. 8 MR. GORE: Can we get a copy of 9 that? 10 MR. CRAMPTON: Is that one of the 11 ones that we had yesterday? 12 WITNESS: Yes, sir. 13 MR. CRAMPTON: This stuff? These 14 are -- this appears to be one document, 15 although it's not stapled together, 16 bearing Bates numbers 94419701. Did 17 you get that? 94419701 through 9705. 18 MR. GORE: Thank you. 19 Q: This is the first time I've seen this 20 document. What I'll do, rather than sit here 21 and read it now, I'll take a look at it at 22 the break and see if there's anything we 23 need to do with it. Shall we staple -- is 24 this in fact one document? Should we staple 25 this together?</p>	<p>1 is 94419716. 2 MR. GORE: Mark this together as 3 Exhibit No. 4. 4 [PLAINTIFF'S DEPOSITION EXHIBIT NO.4 5 MARKED FOR IDENTIFICATION] 6 MR. CRAMPTON: The last one 7 appears to be pages from what might be 8 a larger document -- you can ask the 9 witness about them -- bearing the Bates 10 numbers 94419737 through 9750. 11 MR. GORE: If you would, please, 12 mark these as Exhibit No. 5. Thank you. 13 [PLAINTIFF'S DEPOSITION EXHIBIT NO.5 14 MARKED FOR IDENTIFICATION] 15 MR. CRAMPTON: Can we take a 16 short break? 17 MR. GORE: Certainly. 18 VIDEOGRAPHER: Off the record at 19 9:34. 20 [RECESS - 9:34 A.M. TO 9:44 A.M.] 21 VIDEOGRAPHER: On the record at 22 9:44. 23 MR. CRAMPTON: There is one more 24 document that Victor reviewed. What 25 I'm giving you is the second page of a</p>

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1 fax. I'm just pulling off the cover  
2 page, and this document doesn't have a  
3 Bates number on it. It says, "FTC  
4 Report 1990-1997," and it has a chart  
5 on it.  
6 MR. GORE: Thank you. I'll ask  
7 that the reporter mark this as Exhibit  
8 No. 6.  
9 [PLAINTIFF'S DEPOSITION EXHIBIT NO. 6  
10 MARKED FOR IDENTIFICATION]  
11 MR. GORE: We will -- Mr. Arnold  
12 and I will review those over lunch and  
13 see if there's any questions that we  
14 need to ask Mr. Lindsley about them and  
15 for the time being just let them sit.  
16 MR. CRAMPTON: Okay.  
17 Q: Other than Exhibits 2 and 3 from yesterday's  
18 deposition and Exhibits 2 through 6 of today's  
19 deposition, are there any other documents  
20 that you reviewed to prepare for your  
21 deposition?  
22 A: No other documents.  
23 Q: Other than the individuals you have already  
24 testified about, is there anyone else you  
25 spoke with about your deposition?

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1 A: Nobody else.  
2 Q: Did you read your prior deposition  
3 transcripts in preparing for this deposition  
4 or yesterday's deposition?  
5 A: Not in preparing for this, no.  
6 Q: Or yesterday's?  
7 A: No, I have not.  
8 Q: Mr. Lindsley, are you a smoker?  
9 A: I am not.  
10 Q: Have you ever smoked?  
11 A: I have.  
12 Q: How old were you when you started smoking?  
13 MR. CRAMPTON: Objection,  
14 relevance.  
15 A: Thirty.  
16 Q: How old were you when you stopped smoking?  
17 MR. CRAMPTON: Same objection.  
18 A: Thirty-five.  
19 Q: Why did you start smoking?  
20 MR. CRAMPTON: Same objection.  
21 A: I started smoking because I was working for  
22 a tobacco company -- that's not why I  
23 started. I started because I thought it was  
24 part of my obligation to have a clear  
25 understanding of how our tobacco products

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1 tasted versus competitive brands.  
2 Q: When you started smoking, did you perform  
3 taste test comparisons between Lorillard  
4 tobacco products and competitive brands?  
5 A: Just on my own. I would smoke a Lorillard  
6 product and occasionally a competitive  
7 product as a point of reference.  
8 Q: Before age 30 had you ever smoked a  
9 cigarette?  
10 MR. CRAMPTON: Objection,  
11 relevance. Let me just have a  
12 continuing objection on his personal  
13 smoking history as being not relevant,  
14 not reasonably calculated to lead to  
15 discovery of admissible evidence.  
16 MR. GORE: That's fine.  
17 A: Experimentation. No other reasons.  
18 Q: On average, what quantity of cigarettes did  
19 you smoke after you started at age 30?  
20 A: Maybe ten cigarettes a day.  
21 Q: That was from -- ten cigarettes a day from  
22 ages 30 to 35, is that correct?  
23 A: That's approximate, yes.  
24 Q: Were there any other reasons that you  
25 started smoking besides your performance of

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1 the taste test comparisons?  
2 A: No.  
3 Q: Did you enjoy smoking?  
4 A: Yes, I did.  
5 Q: Why did you stop at age 35?  
6 A: Well, let me point out that I still on  
7 occasion have a cigarette as a point of  
8 reference if there's a new product, but I  
9 don't smoke ten cigarettes a day any longer.  
10 I just chose that it was not what I wanted  
11 to do any longer. Same reasons people stop  
12 smoking -- or stop drinking, you know, Pepsi  
13 and change to Coke or stop drinking soft  
14 drinks, period. They choose not to anymore.  
15 Q: Any other reasons you stopped?  
16 A: No.  
17 Q: Did you ever talk to a doctor about your  
18 smoking?  
19 A: I have not.  
20 Q: Ever suffer any ill-health effects from  
21 smoking?  
22 A: Did not.  
23 Q: Are you married?  
24 A: I am not married.  
25 Q: Have you ever been married?

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1 A: I have not been married.  
2 Q: Do you have any children?  
3 A: I do not have any children.  
4 Q: How would you describe Lorillard's corporate  
5 structure with respect to its marketing and  
6 advertising of its products in California?  
7 A: I don't know what you mean by corporate  
8 structure.  
9 Q: What I'm getting at is, there was some  
10 testimony yesterday during your deposition  
11 for the state of Massachusetts that  
12 Lorillard's marketing and advertising efforts  
13 are to a great extent conducted nationally  
14 rather than regionally or state by state. Is  
15 that statement true? What I just said, is  
16 that true with respect to California?  
17 A: That statement is true and not true. I mean  
18 I do remember saying yesterday that we write  
19 national marketing plans. However, each  
20 brand does specify divisions into groupings  
21 based on brand performance and competitive  
22 brand performance, and based on those  
23 groupings, that marketing strategies are  
24 written to support the brand's strategy to  
25 either defend the business that it has or

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1 develop business from a competitive smoker,  
2 whatever the situation might be, and that  
3 specific marketing plans and tactics are  
4 written against the brand's objective for  
5 those particular groupings of markets.  
6 So, yes, Newport, for example, has a  
7 national marketing plan; but it is broken  
8 down into five groupings. And each group  
9 has a series of marketing programs directed  
10 against it.  
11 Q: Who at Lorillard is primarily responsible for  
12 writing or preparing the Newport national  
13 marketing plan?  
14 A: A gentleman that works for me who's a senior  
15 brand manager is responsible, as are all  
16 other brand managers at Lorillard responsible  
17 for writing the marketing plan for the  
18 coming year.  
19 Q: That would be the marketing plan for their  
20 respective brands?  
21 A: Yes, sir.  
22 Q: The national marketing plans are prepared on a  
23 brand-by-brand basis, is that correct?  
24 A: Well, the marketing plans are prepared on a  
25 brand-by-brand basis. Not every brand

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1 necessarily has a national marketing plan.  
2 Q: The senior brand manager who prepared the  
3 national marketing plan for Newport, what is  
4 his name or her name?  
5 A: His name is Collett Thach.  
6 Q: Can you give me a spelling on that?  
7 A: Which one? Both?  
8 Q: Both.  
9 A: Collett, C-o-l-l-e-t-t, and Thach, T-h-a-c-h.  
10 Q: Where does he work?  
11 A: He works right here in Greensboro.  
12 Q: What other Lorillard brands have a national  
13 marketing plan?  
14 A: I would say Newport only. That does not  
15 mean that those brands aren't distributed  
16 nationally. It just means they might not be  
17 supported everywhere.  
18 Q: Do the other Lorillard brands other than  
19 Newport have any kind of marketing plan  
20 other than a national marketing plan, for  
21 example, a regional marketing plan?  
22 A: Yes, in fact, the others have regional  
23 marketing plans.  
24 Q: Which Lorillard brands have regional  
25 marketing plans?

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1 A: Kent cigarettes, Old Gold cigarettes and  
2 Maverick cigarettes.  
3 Q: What about True?  
4 A: True has no marketing plan.  
5 Q: Can you describe for me the regional  
6 marketing plan or plans for Kent?  
7 A: I'm not sure what you want me to describe  
8 for you.  
9 Q: Is there one regional marketing plan for a  
10 particular region, or is there more than one  
11 for different regions of the country?  
12 A: Similar to Newport. Newport takes the whole  
13 country, and they break it down into  
14 groupings. Old Gold, for example, would  
15 take primarily I think the midwest and the  
16 northeast area of the country and break that  
17 down into groupings. What those specific  
18 groupings are, I can't tell you off the top  
19 of my head.  
20 The same thing for Maverick. Maverick  
21 is also Southeast and the Midwest and parts  
22 of the West Coast, and they also have their  
23 markets broken down into specific groupings  
24 as well too. And that's also true of Kent  
25 as well.

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1 Q: What regions does Kent focus or concentrate  
2 on?  
3 A: Well, there's an area in Florida. There's an  
4 area in the Michigan area, and there's an  
5 area in New York State and then a couple  
6 other select markets here and there across  
7 the country.  
8 Q: Are there any other Lorillard brands that have  
9 regional marketing plans similar to the ones  
10 that you've described for Kent, Old Gold and  
11 Maverick?  
12 A: I just described Old Gold and Maverick.  
13 Q: I mean --  
14 A: I'm sorry.  
15 Q: -- other than those?  
16 A: Oh, no. No, no others. Other brands -- all  
17 the other brands that are -- that Lorillard  
18 have are unsupported brands.  
19 Q: When you say "unsupported brands," in  
20 layman's terms what does that mean?  
21 A: That means that we don't spend any money  
22 against them in the area of advertising or  
23 promotion.  
24 Q: If a brand is not supported by advertising or  
25 promotion, what is the driving force in the

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1 market that motivates consumers to buy it?  
2 Is it favorable word of mouth or other  
3 factors?  
4 A: No, each brand has a dedicated group of  
5 smokers that just prefer that brand over all  
6 others. So those smokers drive those  
7 brands' performance.  
8 Q: What are Lorillard's unsupported brands?  
9 A: It would be True and Satin, Triumph and Max.  
10 Q: Is it possible for you to give a short  
11 description of the characteristics of each of  
12 Lorillard's products, each of Lorillard's  
13 brands?  
14 A: Okay. Now, you define -- have to define  
15 characteristics.  
16 Q: By characteristics I mean if someone is a  
17 Kent smoker, what is special or unique about  
18 Kent? How is Kent different from, say, Old  
19 Gold?  
20 A: Are you talking about the way the product  
21 tastes or are you talking -- I'm still not  
22 sure what you're asking.  
23 Q: I'm talking more about -- well, taste, level  
24 of tar, nicotine. It's actually a lot of  
25 things, but I'm trying to find out the

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1 differences in customer behavior, why some  
2 people smoke Kents as opposed to other  
3 Lorillard products.  
4 A: Okay, I can give you a brief description for  
5 each.  
6 Q: Okay.  
7 A: Kent goes back to 1952. It was the original  
8 low-tar brand in the industry at the time --  
9 filtered low-tar cigarette in the industry.  
10 Generated a lot of business very quickly and  
11 in the early 1970s expanded to Kent Gold  
12 Lights, and then after that in the 1980s  
13 expanded to Kent III, which were also  
14 low-tar cigarettes only at lower tar levels  
15 than the original Kent.  
16 So Kent is a family of three distinct  
17 low-tar brands, Kent, Kent Gold Lights and  
18 Kent III. Each brand has found its own  
19 consumer. Kent's franchise, I mentioned  
20 yesterday, is a bit older. Thirty-five years  
21 of age and older and because of its history,  
22 going back to 1952, we would have an older  
23 smoker base.  
24 It has been recently supported in the  
25 marketplace in some key areas due to our

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1 acknowledgement that there might be some  
2 potential for that brand to grow. Okay. So  
3 it's really been a test case to find out  
4 whether or not we can maintain the consumer  
5 that we have and get some competitive  
6 smokers that used to smoke Kent back to  
7 smoking Kent.  
8 Old Gold, on the other hand, is  
9 Lorillard's oldest brand. It had been very  
10 successful for many, many years. Had been  
11 unsupported for a variety of years. Those  
12 monies were taken and given to brands that  
13 had stronger opportunities in the marketplace  
14 and recently has gone through an evolution  
15 from a full-price brand to a discount brand  
16 in the marketplace, recognizing the growth of  
17 discount brands in the industry, and is being  
18 supported in places where Old Gold is a very  
19 strong brand and where we have the ability,  
20 based on the size of the discount segment, to  
21 get competitive discount smokers to switch to  
22 Old Gold. Okay. And Old Gold has a  
23 full-flavor line extension and a low-tar line  
24 extension.  
25 Q: Okay.

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1 A: Maverick, on the other hand, is most recent  
 2 to us. It had been Harley-Davidson  
 3 cigarettes before. Once we dissolved our  
 4 license agreement with Harley-Davidson  
 5 cigarettes -- the Harley-Davidson company,  
 6 that product went from Harley-Davidson to  
 7 Maverick.  
 8 Q: What year did that occur?  
 9 A: I was going to say two years ago. So 1996  
 10 the transition started, give or take a year,  
 11 and that product now is in the same geography  
 12 that Harley-Davidson was in, which is most of  
 13 the country with the exception of the  
 14 Northeast. It has a full flavor, a low tar.  
 15 It has regular and menthol line extensions  
 16 in the same package as Harley-Davidson, only  
 17 with a different name, and it's also a  
 18 discount brand.  
 19 And that brand is being positioned  
 20 against Marlboro smokers and Winston smokers,  
 21 full-price brands' smokers looking for a  
 22 product as good as theirs, only at a lower  
 23 price.  
 24 Q: Thank you. I think we missed Newport.  
 25 A: Oh, Newport. Newport is Lorillard's flagship

1 sure exactly the extent to what that -- to  
 2 how that brand was distributed in the  
 3 marketplace.  
 4 Q: Triumph?  
 5 A: I don't know too much about Triumph other  
 6 than that is also -- I don't know too much  
 7 about Triumph. We'll stop there. It's been  
 8 around for a long time and --  
 9 Q: Finally, Max?  
 10 A: Max is Lorillard's only 120s, a free-standing  
 11 brand positioned to compete with the other  
 12 120s line extensions of Virginia Slims and  
 13 More.  
 14 Q: Who is the individual who would be most  
 15 knowledgeable about the preparation of  
 16 Newport's national marketing plan?  
 17 A: I would be.  
 18 Q: The same question for Kent.  
 19 A: I would be.  
 20 Q: Same question for Old Gold.  
 21 A: The person that works on that brand on a  
 22 day-to-day basis would be the brand manager.  
 23 Did you want his name?  
 24 Q: Yes.  
 25 A: His name would be Leonard Jones.

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1 brand. It is a menthol brand only currently.  
 2 It has a full-flavor line and a low-tar line,  
 3 and it is marketed nationally.  
 4 Q: What about True?  
 5 A: True is Lorillard's ultra low-tar line  
 6 extension or brand name. It is only ultra  
 7 low tar. It comes in full flavor and  
 8 menthol packings.  
 9 MR. CRAMPTON: I'm sorry. You  
 10 said full flavor?  
 11 WITNESS: Full -- excuse me.  
 12 A: Regular and menthol.  
 13 Q: I'm sorry.  
 14 A: I'm sorry.  
 15 Q: Go ahead, please.  
 16 A: It's basically marketed -- or distributed in  
 17 most of the country, but its strength is in  
 18 the Northeast and the Southeast. And its  
 19 consumer profile is very similar to Kent.  
 20 Q: What about Satin?  
 21 A: Satin we no longer support like True. Satin  
 22 came out about 15 years ago. It was  
 23 positioned to smokers in the marketplace that  
 24 wanted to have a product that had a satin  
 25 tip or better feel on the mouth, and I'm not

1 Q: Is he a brand manager or a senior brand  
 2 manager?  
 3 A: He is a brand manager, and he -- now, he  
 4 would be most knowledgeable when it comes  
 5 to, you know, the day-to-day details of this  
 6 brand and that only.  
 7 Q: Where does he work?  
 8 A: Also here in Greensboro.  
 9 Q: Who would be most knowledgeable about the  
 10 national marketing plan for Maverick?  
 11 MR. CRAMPTON: Objection. It's a  
 12 suggestion that Maverick has a national  
 13 marketing plan because I think that's  
 14 inconsistent with the testimony.  
 15 Q: If I'm incorrect, please let me know.  
 16 A: All right.  
 17 Q: Is Maverick not a national marketing plan  
 18 brand?  
 19 A: No, it's not. No other brands other than  
 20 Newport, and I want to change what I -- the  
 21 testimony I just gave as far as Old Gold is  
 22 concerned. For both Old Gold and Maverick,  
 23 our two discount brands, beyond myself, the  
 24 other person most knowledgeable about the  
 25 day-to-day implementation of those marketing

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<p>1 plans and what those marketing plans 2 represent would be my counterpart. Her name 3 is Judy Young, and she is the group brand 4 director. She oversees those two brands. 5 Q: Which two brands? I'm sorry. 6 A: Old Gold and Maverick. 7 Q: What is her title? 8 A: Group brand director. 9 Q: She works where? 10 A: She works also here in Greensboro; and, 11 again, she oversees those two brands and 12 would be up on all of the issues on a 13 day-to-day basis. 14 Q: Is there a group brand director for Kent? 15 A: Yes. 16 Q: Who is that person? 17 A: I am. 18 Q: Is there a group brand director for Newport? 19 A: Yes. 20 Q: That is you? 21 A: Yes, and the same for True. 22 Q: You are the group brand director for True? 23 A: Yes. 24 Q: Are you the group brand director for Satin? 25 A: There is not a group brand director for those</p>	<p>1 my, you know, need to have a very, very 2 clear understanding of the brands that I 3 supported. 4 Q: Did you come to any sort of conclusions 5 personally as a result of this 6 experimentation as to why a smoker would 7 switch from one brand to another? 8 MR. CRAMPTON: I'm going to 9 object to this line of questioning as 10 being outside the scope of the notice 11 of deposition. Mr. Lindsley does not 12 speak for the company on these issues. 13 I think the area that you're talking 14 about is something that he testified 15 that he did on his own and not as part 16 -- not necessarily as part of his job 17 responsibilities for the company. 18 I'd just like to have that 19 continuing objection to these questions 20 about his comparisons of one brand 21 versus another, his -- any evaluation 22 he had on why people switch from one 23 brand to another unless it's related to 24 advertising and promotion. 25 MR. GORE: I understand.</p>
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<p>1 other brands. 2 Q: When you were doing your taste test 3 evaluations of Lorillard products and other 4 companies' products from ages 30 to 35, did 5 you prepare any sort of reports or any 6 written documents reflecting your findings or 7 conclusions? 8 A: No, I did not. 9 Q: Did you deliver any sort of oral reports or 10 findings to anyone at Lorillard? 11 A: On an occasion I might have a discussion and 12 mentioned what I experienced between our 13 brands and someone else's. 14 Q: Did you notice distinctive or prominent taste 15 differences between various brands? 16 A: Yes, I did. 17 Q: Did this information prove useful to you in 18 your position at Lorillard? 19 A: I would say only in the form of a personal 20 evaluation. It's good to know what your 21 products stand for from a taste perspective 22 no matter what you do, and I think it was 23 important for me to understand what made one 24 product different than the other. But it 25 never really went beyond that. It was only</p>	<p>1 Q: Do you understand the question? 2 A: Would you ask it again, please? 3 MR. GORE: Could you please read 4 back the question? 5 [QUESTION READ BACK AS REQUESTED] 6 A: The answer would be no. Again, it was a 7 personal experimentation on my part; and, you 8 know, it's like why one person likes 9 someone's spaghetti sauce versus someone 10 else's. It's all a matter of personal 11 preference, and why one smoker likes one 12 brand versus the other, again, is also their 13 choice. And I didn't draw any conclusions 14 as to why they would prefer one over the 15 other. 16 Q: You testified that with respect to Newport's 17 national marketing plan -- correct me if I'm 18 not stating this correctly -- that it is 19 divided into five divisions nationally, is 20 that correct? 21 A: No, that's incorrect. It's divided into 22 five tiers. 23 Q: Five tiers? 24 A: Right. 25 Q: What are those five tiers?</p>

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1 A: I'll give you broad definitions of what those  
2 five tiers are. For one, each tier is made  
3 up of a number of Lorillard divisions. Tier  
4 one would represent the tier where Newport is  
5 strongest, the leading menthol brand in the  
6 market. Tier two represents markets that  
7 are also very strong for Newport, in most  
8 cases where Newport is the leading menthol  
9 brand. However, competitive brands and  
10 discount menthol brands are also extremely  
11 strong.

12 Okay. Tier three would be divisions  
13 where Newport is underdeveloped, meaning  
14 below its national share, but where key  
15 full-price and discount competitive brands  
16 are extremely well developed. And tier four  
17 and tier five are basically the same with one  
18 exception. What makes them the same is that  
19 it's where Newport as well as competitive  
20 menthol and discount menthol brands are  
21 underdeveloped. However, in tier four there  
22 are large pockets of strength that indicate  
23 some menthol growth opportunity, and in tier  
24 five there are smaller pockets of strength.

25 MR. CRAMPTON: I'd just like to

1 for me tier number one?

2 A: Geographically? I'm still not sure what  
3 you're asking me. How do you want me to  
4 describe it?

5 Q: Is it -- can tier one be described  
6 geographically or would it be more  
7 appropriate to describe it demographically?  
8 Is it an area of the country or is it a  
9 segment or segments of the population?

10 A: It couldn't be defined demographically  
11 because the demographic profile of the brand  
12 is similar everywhere. It could only be  
13 defined geographically and from a marketing  
14 perspective in terms of what types of  
15 programs we use in those areas.

16 Q: Then geographically, could you please  
17 describe tier one?

18 A: Tier one geographically would be in the  
19 Northeast and parts of the Southeast. Now,  
20 keep in mind that there are stragglers.  
21 There are some divisions from other places  
22 that might be in there. I believe there  
23 might be one California division in tier one.

24 Q: Okay.

25 A: So this is kind of a general geographic

1 make a point for the record. I don't  
2 know whether we're getting into things  
3 here that are competitively sensitive,  
4 but we have a case management order in  
5 California that would have this  
6 deposition be maintained as  
7 confidential as though it contained  
8 trade secret information. It wouldn't  
9 be distributed, and we get 30 days  
10 after that to make a designation of  
11 anything that is highly confidential,  
12 for treatment that way. And the rest  
13 of it --

14 MR. GORE: I will certainly  
15 stipulate to the handling, review and  
16 treatment of this transcript in all  
17 respects as has been prescribed by our  
18 case management order. No problem  
19 there.

20 Q: The five tiers that you have just described,  
21 are they geographic areas of the country?

22 A: Are they contiguous to each other?

23 Q: Not so much contiguous, but are they -- for  
24 example, tier number one, the tier where  
25 Newport is the strongest, can you describe

1 description.

2 Q: I understand. What about tier two?

3 A: Tier two would be primarily in the midwestern  
4 area of the country.

5 Q: Tier three?

6 A: Tier three would be primarily in the Deep  
7 South and in parts of the Southwest.

8 Q: Tier four?

9 A: Tier four and tier five are going to be  
10 scattered everywhere with a lot of divisions  
11 west of the Mississippi; but if you saw the  
12 map, they would be a little bit everywhere.

13 Q: In general terms, which of these five tiers  
14 would California fall into?

15 A: I believe there are California divisions in  
16 every single tier.

17 Q: Oh, is that right?

18 A: Yes.

19 Q: Off the top of your head, do you know, for  
20 example, which tier Los Angeles is in?

21 A: I'll say that there is -- Los Angeles is  
22 broken down into maybe four different  
23 divisions. So I think there's one in tier  
24 one. There might be one in tier two, and I  
25 think there's one in tier three.

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<p>1 Q: Same question for San Francisco. 2 A: San Francisco is going to be in one and two; 3 and the second I said that, I'm not sure 4 that that's correct. But I'll hold onto that 5 one since I can't recall my map geography. 6 Q: Is the marketing of Lorillard's Kent product 7 divided into tiers? 8 A: It is not. 9 Q: Is there some different type of marketing 10 structure or organization that applies to 11 Kent as opposed to Newport's five tiers? 12 A: The places where we are marketing -- 13 supporting Kent cigarettes represent those 14 places where Kent is average to above in its 15 development and where competitive low-tar 16 brands also have the same type of development. 17 Q: How does California fall along that spectrum? 18 A: I believe there is one Los Angeles division 19 that is part of that grouping. The rest of 20 California falls out of it. 21 Q: Part of which grouping? 22 A: Part of the grouping that -- where we 23 support Kent. 24 Q: And that's it for the state? 25 A: That's it for the state.</p>	<p>1 are available everywhere to anybody that 2 qualifies. 3 Q: Throughout the United States? 4 A: Yes, sir. 5 MR. ARNOLD: Just so the record 6 is clear, I think you're talking about 7 Exhibits 2 and 3 from yesterday? 8 MR. GORE: Yes, Exhibits 2 and 3 9 from your deposition yesterday. 10 Q: So these merchandising programs are separate 11 from what we've been referring to as 12 promotion and marketing? 13 A: Yes, you could separate them. I do have to 14 clarify this again. With the terminology 15 "marketing," everything, whether it's 16 advertising, promotion or merchandising, 17 falls under the area of marketing. That's 18 how we market our brands. It's all the 19 different pieces, and each one is a separate 20 entity under marketing. 21 Q: I understand. All right. How is the 22 Maverick brand marketed in the state of 23 California? 24 A: It is supported there. It's supported on 25 displays and through promotion.</p>
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<p>1 Q: When you say "supported," you mean supported 2 with advertising and marketing dollars? 3 A: With some form of marketing dollars, yes. 4 Q: Marketing and advertising or just marketing? 5 A: Well, marketing is advertising and promotion. 6 Marketing is everything we do on the brand, 7 so that's the -- that's the heading. 8 Q: All right, same question for Old Gold. I 9 shouldn't -- let me ask a proper question. 10 How does Lorillard treat the 11 marketing/promotion of Old Gold within the 12 State of California? 13 A: I don't believe that it is supported there at 14 all, Old Gold. 15 Q: When you say that a brand is not supported, 16 does that mean that the kinds of 17 merchandising programs that are described in 18 Exhibits 2 and 3 would not be available in 19 those areas? 20 A: No, the merchandising programs there have 21 nothing to do with the specific brands. 22 Q: So even if a brand is not supported, these 23 programs may still be available in certain 24 areas, is that -- 25 A: Yes, those programs there in Exhibit 2 and 3</p>	<p>1 Q: Do you know where? 2 A: I believe in the state. 3 Q: In the state of California? 4 A: Yes. 5 Q: Do you know any more specificity than that, 6 where within the state it is supported? 7 A: I believe it's supported in the total state 8 -- in the whole state. It has distribution 9 and it is supported in the state of 10 California. 11 Q: When you say that a brand is supported within 12 a state, is it accurate to say that brands 13 are either supported or not supported on a 14 statewide basis, or is it broken down into 15 cities or parts of cities? 16 A: It's actually broken down into divisions. 17 Q: What is a division. 18 A: A division could be a city and all the 19 surrounding communities around it. I don't 20 think it goes broader than that. In some 21 cases it could involve a couple cities, 22 depending on where it is and the size of the 23 cities. It's only the way we define our -- 24 the geography based on the ability of a sales 25 representative to actually make all the calls</p>

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<p>1 available.</p> <p>2 Q: Is it accurate to say that divisions are sales</p> <p>3 territories?</p> <p>4 A: Our divisions are sales territories. Yes,</p> <p>5 they are. Although a territory is bigger</p> <p>6 than a division, but it is part of a sales</p> <p>7 territory, a division.</p> <p>8 Q: Is this what you were testifying about</p> <p>9 earlier when I think you mentioned that Los</p> <p>10 Angeles has four divisions? Was that correct?</p> <p>11 A: I believe there are three or four divisions,</p> <p>12 yes.</p> <p>13 Q: Is there a document that shows all of the</p> <p>14 divisions that Lorillard has nationally?</p> <p>15 A: Yes, there would be.</p> <p>16 Q: What document is that?</p> <p>17 A: The one that I'm referring to is a map of</p> <p>18 the country that has all of the regions of</p> <p>19 the country specified and with each --</p> <p>20 within each region, all of the divisions that</p> <p>21 are there.</p> <p>22 Q: Does this map -- does it have an official</p> <p>23 name or title?</p> <p>24 A: No, I call it the map. I don't know what's</p> <p>25 at the top of it, actually.</p>	<p>1 Q: Who do you presently report to?</p> <p>2 A: I report to the vice president of advertising</p> <p>3 and brand management.</p> <p>4 Q: What is his name?</p> <p>5 A: George Telford, T-e-l-f-o-r-d.</p> <p>6 Q: Where does he work?</p> <p>7 A: He works here in Greensboro, too.</p> <p>8 Q: How many people presently report to you?</p> <p>9 A: Six or seven.</p> <p>10 Q: What are their names?</p> <p>11 A: Collett Thach, Natasha Ball, Lorissa Ryder,</p> <p>12 Alan Preddy.</p> <p>13 Q: How do you spell Preddy?</p> <p>14 A: P-r-e-d-d-y. Artina Douglas. Artina, A-r --</p> <p>15 Q: Artina?</p> <p>16 A: -- yeah, t-i-n-a, Douglas and Lynn Marsh.</p> <p>17 The last two are administrative assistants.</p> <p>18 Q: What is Alan Preddy's position or title?</p> <p>19 A: He's brand manager on Kent and True.</p> <p>20 Q: What is Lorissa Ryder's title or position?</p> <p>21 A: She's assistant brand manager on Newport.</p> <p>22 Q: What is Natasha Ball's title or position?</p> <p>23 A: Natasha is an associate brand manager.</p> <p>24 Q: For what brand or brands?</p> <p>25 A: For Newport.</p>
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<p>1 MR. GORE: Counsel, do you know</p> <p>2 whether this map has been produced?</p> <p>3 MR. CRAMPTON: I do not know. I</p> <p>4 can find out, but I'm not familiar with</p> <p>5 it.</p> <p>6 MR. GORE: If you could, please</p> <p>7 find out, and we would certainly</p> <p>8 request a copy of -- I don't know</p> <p>9 whether it's a one-page or a multi-page</p> <p>10 or a booklet, but we'd certainly like a</p> <p>11 copy of it.</p> <p>12 MR. CRAMPTON: I'll check into it.</p> <p>13 MR. GORE: Thank you.</p> <p>14 Q: (By Mr. Gore) Who is the person who would be</p> <p>15 most knowledgeable about, let's call it, the</p> <p>16 map and interpreting the information that</p> <p>17 Lorillard uses in formulating its marketing</p> <p>18 plans on a national basis?</p> <p>19 A: If I understand what you're saying -- and</p> <p>20 I'm not sure that I do -- the answer is the</p> <p>21 marketing group. --</p> <p>22 Q: Who is the head of the marketing group?</p> <p>23 A: Well, I am here as the most knowledgeable in</p> <p>24 terms of the marketing group. So I would</p> <p>25 then be that person.</p>	<p>1 Q: I may have already covered Collett. Am I</p> <p>2 pronouncing that correctly?</p> <p>3 A: Collett Thach. Senior brand manager on</p> <p>4 Newport.</p> <p>5 Q: Thank you. Do all of these individuals that</p> <p>6 we've just discussed -- they all work here in</p> <p>7 Greensboro?</p> <p>8 A: Yes, they do.</p> <p>9 Q: Does Lorillard have an office of any kind in</p> <p>10 California?</p> <p>11 A: Yes, there are division offices in California.</p> <p>12 Q: How many division offices are there?</p> <p>13 A: I would say approximately eight.</p> <p>14 Q: These division offices, they're not --</p> <p>15 there's not one in each division along the</p> <p>16 lines of the divisions that you described</p> <p>17 earlier on the map?</p> <p>18 A: Yes, there would be one for each division.</p> <p>19 Q: So there are a total of eight marketing</p> <p>20 divisions -- Lorillard has a total of eight</p> <p>21 marketing divisions in California?</p> <p>22 A: Approximately eight. There could be a</p> <p>23 couple more or one or two less, but that's</p> <p>24 about the right ballpark.</p> <p>25 Q: Do you know where any of these division</p>

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1 offices are located?  
 2 A: In terms of street address and that kind of  
 3 thing?  
 4 Q: No, just in terms of what city they're in.  
 5 A: In general, yes.  
 6 Q: Tell me the ones you can recall.  
 7 A: There are some in Los Angeles.  
 8 Q: "Some" meaning more than one?  
 9 A: Yes, if there are three or four divisions,  
 10 there would be three or four offices. And I  
 11 believe that's the case. I mean there could  
 12 be, if the area is big enough, one major  
 13 office where everyone comes to. So actually  
 14 in the case of Los Angeles, there could be  
 15 -- because that's where the region office is,  
 16 there could be one office where all of those  
 17 divisions report to. So that could really be  
 18 one.  
 19 Q: You say LA is where the region office is?  
 20 A: Yes, that's where the regional office is as  
 21 well.  
 22 Q: What region are you referring to?  
 23 A: Region 15.  
 24 Q: What area does Region 15 encompass?  
 25 A: Southern California and probably the Nevada

1 A: Yes, there is.  
 2 Q: Who is that person or persons?  
 3 A: I don't -- that person just changed  
 4 recently, so I don't actually recall that  
 5 name.  
 6 Q: Well, who's the most recent person you can  
 7 recall?  
 8 A: I don't -- it doesn't come to my mind right  
 9 this moment.  
 10 Q: What is the title given to a person who's  
 11 the head of one of these regions?  
 12 A: He would be the regional sales manager.  
 13 Q: Who would be the person most knowledgeable  
 14 if I wanted to find out who is the regional  
 15 sales manager presently for Region 15?  
 16 A: Kathy Sparrow would know that at the tip of  
 17 her tongue.  
 18 Q: Do you know who the regional sales manager is  
 19 for Region 16?  
 20 A: Yes, I would.  
 21 Q: Who is that?  
 22 A: His name is Bob Bonomo.  
 23 Q: How do you spell Bonomo?  
 24 A: I think it's B-o-n-o-m-o, Bonomo.  
 25 Q: Got it. Do you know where the -- strike

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1 area as well. Mostly southern California,  
 2 though.  
 3 Q: What area does Region 14 encompass?  
 4 A: Those wonderful states of Montana and Idaho  
 5 and really kind of that northern western tier  
 6 if you will.  
 7 Q: But no part of California?  
 8 A: No part of California, no. Actually, I think  
 9 Seattle, Washington State.  
 10 Q: You say "those wonderful states," when you're  
 11 smiling. Do you --  
 12 A: They're actually beautiful. That's why.  
 13 They're very, very pretty states.  
 14 Q: Are there any other regions that cover areas  
 15 in California?  
 16 A: Yes, Region 16 covers northern California.  
 17 Q: Do you know where Region 15 is divided from  
 18 Region 16?  
 19 A: Not exactly; but like I said, Region 15 is  
 20 really the southern part of California.  
 21 Q: How many regions does Lorillard have  
 22 nationally?  
 23 A: There are 25 regions nationally.  
 24 Q: Is there a person or persons who is the head  
 25 of Region 15 in California?

1 that.  
 2 The head or main office of a region,  
 3 does it have a particular name other than  
 4 regional office?  
 5 A: No, that's it.  
 6 Q: Are they called regional offices?  
 7 A: Yes, they are.  
 8 Q: Do you know where the regional office for  
 9 Region 15 is located?  
 10 A: Yes, I do.  
 11 Q: Where is that?  
 12 A: Los Angeles.  
 13 Q: Where is the office for Region 16 located?  
 14 A: I believe it's in San Francisco or Oakland.  
 15 It's one or the other, but it's in that area.  
 16 Q: Have you ever been there?  
 17 A: Yes, I have.  
 18 MR. GORE: Can we take a break  
 19 for a few minutes?  
 20 MR. CRAMPTON: Sure.  
 21 VIDEOGRAPHER: We're off the  
 22 record at 10:33.  
 23 [RECESS - 10:33 A.M. TO 10:45 A.M.]  
 24 VIDEOGRAPHER: This is the  
 25 beginning of tape two of the deposition

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1 of Victor D. Lindsley. We're on the  
 2 record at 10:45.  
 3 Q: Mr. Lindsley, you understand you're still  
 4 under oath, right?  
 5 A: Yes, I do.  
 6 Q: We were talking about the regions and  
 7 divisions within California. There are two  
 8 regions, Regions 15 and 16, that cover  
 9 southern California and northern California,  
 10 correct?  
 11 A: Yes, sir.  
 12 Q: There are a total of eight divisions -- or  
 13 approximately eight divisions within the  
 14 state, is that right?  
 15 A: Yes, sir.  
 16 Q: And I believe you've testified that there  
 17 are three or four divisions in Los Angeles,  
 18 is that correct?  
 19 A: Yes, I did.  
 20 Q: By Los Angeles, do you mean the greater Los  
 21 Angeles County?  
 22 A: I believe it goes as far as that, yes.  
 23 Q: Do you know where any of the other divisions  
 24 within the state of California are?  
 25 A: Yes, I do.

1 Q: Where are they?  
 2 A: There is one in San Diego. There is one in  
 3 San Francisco. There is an Oakland north  
 4 division and an Oakland south division, and I  
 5 believe that there is a Glendale division as  
 6 well. And there used to be a north and a  
 7 south, and I'm not sure if that's the case  
 8 anymore. But I believe that it probably is,  
 9 that there is a Glendale north and a Glendale  
 10 south division.  
 11 Q: Is this Glendale the suburban community just  
 12 to the north of Los Angeles? Is that the --  
 13 A: Yes.  
 14 Q: Any others you can recall?  
 15 A: No, I think that's it.  
 16 Q: Is there a position for the person who is  
 17 the head of each division?  
 18 A: What do you mean the "position"?  
 19 Q: Is there a -- what do you call the person  
 20 who is responsible for managing a particular  
 21 division?  
 22 A: A division manager.  
 23 Q: Do the division managers report to the  
 24 regional sales managers?  
 25 A: Yes, they do.

1 Q: Do you know who any of the divisional  
 2 managers in the state of California are?  
 3 A: I'm not going to be able to recall them off  
 4 the top of my head.  
 5 Q: Is this information available in a document  
 6 somewhere?  
 7 A: There would be a document that would list all  
 8 the divisions and the division personnel in  
 9 each division, yes.  
 10 Q: Would this be part of the same map that you  
 11 testified about earlier?  
 12 A: The map might be in that book, but I don't  
 13 know if it's the same document.  
 14 Q: Kathy Sparrow again, in addition to be the  
 15 person most knowledgeable about the regional  
 16 offices -- would she be the person most  
 17 knowledgeable about the divisional offices as  
 18 well?  
 19 A: Can you help me along here for a moment?  
 20 When you say "the most knowledgeable about a  
 21 region office," what do you mean?  
 22 Q: What I'm referring to is if we were to have a  
 23 deposition and ask particular questions about  
 24 activities in each of the eight divisions  
 25 within the state of California, who would be

1 the right person to give that deposition?  
 2 A: Are you talking about brand activities?  
 3 MR. CRAMPTON: I object to asking  
 4 this witness who would be the right  
 5 person to give a deposition. Also I'd  
 6 point out that this whole corporate  
 7 structure you're questioning him about  
 8 is outside of the notice of deposition.  
 9 So it's really not an appropriate  
 10 subject for this deposition.  
 11 I'm not going to -- I object to  
 12 it, but I'm not going to instruct the  
 13 witness not to answer. And I certainly  
 14 don't like the suggestion that you now  
 15 need to take another deposition because  
 16 Mr. Lindsley maybe doesn't know some of  
 17 these details that you're asking about  
 18 that are outside of the notice of  
 19 deposition here.  
 20 MR. GORE: I understand.  
 21 Q: Do you understand the question? I can  
 22 rephrase it --  
 23 A: Okay. Rephrase the question.  
 24 Q: -- and make it clearer. Who is the person  
 25 most knowledgeable about marketing and

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<p>1 advertising that is done in each of the eight</p> <p>2 California divisions that you've described?</p> <p>3 A: I would be.</p> <p>4 MR. GORE: Counsel, the document</p> <p>5 or documents that Mr. Lindsley has</p> <p>6 referred to that show the divisions</p> <p>7 within the state of California, do you</p> <p>8 know whether those documents have been</p> <p>9 produced?</p> <p>10 MR. CRAMPTON: I made a call when</p> <p>11 we took a break. I believe that that</p> <p>12 has been produced. It's available to</p> <p>13 you using the 4B index, but we're</p> <p>14 checking to find out precisely where</p> <p>15 and hopefully get you Bates numbers for</p> <p>16 it.</p> <p>17 MR. GORE: Okay. Thank you.</p> <p>18 Q: (By Mr. Gore) Are decisions regarding</p> <p>19 marketing, advertising and promotion of</p> <p>20 Lorillard's brands made at the corporate</p> <p>21 headquarters here in Greensboro?</p> <p>22 A: Yes, they are.</p> <p>23 Q: Who is primarily in charge of those decisions?</p> <p>24 A: The president of the company would be the</p> <p>25 one to approve -- final approval on</p>	<p>1 outside of California in developing marketing</p> <p>2 and promotion plans for Lorillard products to</p> <p>3 be sold within the state of California?</p> <p>4 A: Yes, we work with an advertising agency that</p> <p>5 helps us develop our advertising campaigns</p> <p>6 which are national in scope or based on</p> <p>7 where the brand is being marketed.</p> <p>8 Q: Is that one agency or more than one?</p> <p>9 A: There is currently one agency.</p> <p>10 Q: What is the name of the agency?</p> <p>11 A: The agency's name is Avrett, Free &amp; Ginsberg.</p> <p>12 Q: How do you spell Avrett?</p> <p>13 A: A-v-r-e-t-t.</p> <p>14 Q: Where is Avrett, Free &amp; Ginsberg located?</p> <p>15 A: In New York City.</p> <p>16 Q: Do you work with any marketing research</p> <p>17 companies in developing Lorillard's marketing</p> <p>18 or promotion plans for sales of its products</p> <p>19 in California?</p> <p>20 A: Marketing research companies?</p> <p>21 Q: Yes.</p> <p>22 A: No, not in the state of California.</p> <p>23 Q: Well, both within or without the state of</p> <p>24 California for sales of products in</p> <p>25 California?</p>
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<p>1 everything that we do.</p> <p>2 Q: If the president has final approval, who</p> <p>3 passes on marketing and promotion and</p> <p>4 advertising before it reaches the president?</p> <p>5 A: Who passes on it? I'm sorry.</p> <p>6 Q: Who reviews it or approves it before it is</p> <p>7 passed on to the president?</p> <p>8 A: The person that would review that would be</p> <p>9 myself, for one, and the final approval in</p> <p>10 the marketing department would come from the</p> <p>11 vice president of brand marketing, George</p> <p>12 Telford.</p> <p>13 Q: Do you work with anyone in the state of</p> <p>14 California in developing Lorillard's</p> <p>15 marketing or promotion plans?</p> <p>16 A: No, not -- no, no.</p> <p>17 Q: When I say "anyone," I guess I mean by that</p> <p>18 anyone who is an employee of Lorillard.</p> <p>19 A: No. The answer would be no.</p> <p>20 Q: Do you work with any California advertising</p> <p>21 agencies in developing Lorillard's marketing</p> <p>22 or promotion plans for sales of its products</p> <p>23 in the state of California?</p> <p>24 A: No, we do not.</p> <p>25 Q: Do you work with any advertising agencies</p>	<p>1 A: Well, I -- we need to clarify this for a</p> <p>2 moment because market research companies do</p> <p>3 not develop marketing programs for us. A</p> <p>4 market research company outside would help us</p> <p>5 to determine demographic profiles or</p> <p>6 competitive brand information for individual</p> <p>7 brands. That's a very different thing than</p> <p>8 I think you're asking.</p> <p>9 Q: Yes. Do you have -- do you work with</p> <p>10 marketing research companies that help you</p> <p>11 determine demographic profiles or brand</p> <p>12 preferences that are held by consumers in</p> <p>13 the state of California?</p> <p>14 A: When you say "held by consumers in the state</p> <p>15 of California," what do you mean?</p> <p>16 Q: Held is perhaps the wrong word. Do you work</p> <p>17 with marketing research companies that work</p> <p>18 with you in determining the brand preferences</p> <p>19 and demographic profiles of Lorillard's -- or</p> <p>20 of tobacco consumers in general within the</p> <p>21 state of California?</p> <p>22 A: Not within the state of California, no.</p> <p>23 Q: It's done -- is it correct to say it's done</p> <p>24 nationally on a brand basis?</p> <p>25 A: That's correct to say that.</p>

1 Q: At some level of Lorillard's marketing and  
2 promotion efforts, do you develop plans that  
3 are specific to the state of California?  
4 A: Only in regard to what I've already  
5 testified, and that is based on the brand's  
6 geographic marketing structure. The state of  
7 California might have a slightly different  
8 plan than the state of Massachusetts might  
9 have.  
10 Q: That is based upon demographics and brand  
11 performance?  
12 A: It has nothing to do with demographics.  
13 It's based only on brand performance and  
14 competitive opportunity.  
15 Q: Do the regional or divisional offices within  
16 the state of California have any input into  
17 the development of Lorillard's national or  
18 regional marketing plans?  
19 A: No, but I will say on an occasion we do call  
20 in groups of people from all over the country  
21 to give us, you know, first-hand insight  
22 into brand opportunities at the retail level,  
23 but not specific to California, no.  
24 Q: Is this done on a regular or irregular basis?  
25 A: Irregular basis.

1 Q: Can you recall any occasion in which you  
2 called in representatives from regions or  
3 divisions in California to get their input or  
4 insight as to competitive opportunities in  
5 that state?  
6 A: There was recently a group brought in to  
7 discuss potential for building business on  
8 Maverick, and I believe there was a  
9 representative from Los Angeles in that  
10 grouping.  
11 Q: Do you recall the name of the LA rep?  
12 A: I do not.  
13 Q: When was this meeting?  
14 A: Approximately two months ago.  
15 Q: Was it held here in Greensboro?  
16 A: Yes, it was.  
17 Q: Did you participate in that meeting?  
18 A: For a short period of time, yes.  
19 Q: How long did the meeting last?  
20 A: I think the meeting was, I would say,  
21 approximately in total maybe five hours.  
22 Q: How long did you participate?  
23 A: Probably for the last hour to hour and a  
24 half.  
25 Q: Were there any conclusions or changes in

1 Lorillard's marketing plans that resulted  
2 from that meeting?  
3 A: There has not been any yet, no.  
4 Q: When you say "yet," is there something  
5 anticipated?  
6 A: Not that I'm sure of yet. I mean there are  
7 a bunch of different ideas that would  
8 enhance Maverick merchandising and retail  
9 that are on the board for consideration for  
10 1999, but nothing has been approved.  
11 Q: Can you recall any other meetings like the  
12 one you just described?  
13 A: Probably the last one we did was  
14 approximately two and a half, three years  
15 ago for Newport.  
16 Q: Did you participate in that meeting?  
17 A: Yes, I did.  
18 Q: Who from California attended that meeting?  
19 A: I don't believe there was a representative  
20 from California in that one.  
21 Q: Do you know if Lorillard's marketing or  
22 promotion of Newport in the state of  
23 California was discussed at that meeting?  
24 A: Specifically to California, no.  
25 Q: You don't remember or it was not discussed?

1 A: No, the purpose of this meeting was not to  
2 discuss individual efforts in a state. It  
3 was to discuss a total plan for the brand.  
4 Q: With respect to each of the divisions -- the  
5 eight or so divisions within the state of  
6 California, what are the responsibilities for  
7 each of these divisions as far as  
8 implementing or executing Lorillard's  
9 marketing and promotion of its brands?  
10 A: Their responsibility is executional. They  
11 are the people that execute our merchandising  
12 and promotional programs at retail.  
13 Q: What specifically do they -- what are some of  
14 -- specifically some of the activities that  
15 they do?  
16 A: Well, for one, they're responsible for  
17 working with the retailers in determining the  
18 merchandising programs, the ones from  
19 yesterday that we outlined for you in  
20 Exhibit 2 and 3. They sell those plans.  
21 They qualify the stores, and they sell those  
22 plans in. And they are then responsible for  
23 the rotation of our product and responsible  
24 for the placement of displays and promotional  
25 materials, either a coupon on a pack or a

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1 poster in a window.  
2 Q: These are the sorts of things that a sales  
3 rep does, is that correct?  
4 A: Yes, this is what a sales rep does.  
5 Q: Are there other activities that customarily  
6 make up part of a sales rep's duties?  
7 A: No, they're responsible for merchandising our  
8 products and for promoting our product at  
9 retail.  
10 Q: Who does -- who do the sales reps report to?  
11 A: To the division manager.  
12 Q: There's no intermediate layer of management  
13 between sales rep and division manager?  
14 A: Maybe in one or two cases there might be an  
15 assistant division manager, but I think we  
16 only have maybe two in the country.  
17 Q: Do you know if either of those two are in  
18 California?  
19 A: I don't believe so.  
20 Q: In general terms, what are the duties of a  
21 division manager?  
22 A: The duties of the division manager would be  
23 to manage the field sales rep that work for  
24 him or her.  
25 Q: Do you have any idea in the three or four

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1 divisions in Los Angeles how many reps you  
2 have reporting to the division managers there?  
3 A: Depending on the size of the division, I  
4 would say on average to about three or four  
5 field representatives would report to a  
6 division manager.  
7 Q: How does that compare with Lorillard's  
8 organization nationally? Is that average?  
9 Do you usually have three or four sales reps  
10 reporting to each?  
11 A: Well, it depends on the size of the  
12 territory, how much volume there is in the  
13 territory to support. So in general, your  
14 bigger cities will have more people to manage  
15 a region than you would in a smaller city.  
16 So it can run anywhere from one sales  
17 representative up to probably, you know,  
18 five, six or seven, depending on the size.  
19 Q: Then who does a division manager report to?  
20 A: The division manager will report to the  
21 regional sales manager.  
22 Q: Any intermediate layer of management between  
23 those two?  
24 A: There is what we call a manager of chain  
25 accounts, an MCA, and that manager of chain

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1 accounts reports to the regional division  
2 manager.  
3 Q: Is there one MCA for each region?  
4 A: There is not.  
5 Q: So some regions have an MCA and some do not?  
6 A: That's right. That's correct. Right.  
7 Q: How does Lorillard determine in which regions  
8 to place or to have an MCA?  
9 A: It's simply based on the size of -- and the  
10 number of the chain account headquarters that  
11 might be within a specific geographic  
12 territory.  
13 Q: What does an MCA do?  
14 A: An MCA's responsibility is to deal directly  
15 with the chain headquarters for like a 7-11  
16 or a Grand Union where, you know, they have  
17 central buying locations.  
18 Q: Do you know whether there are MCAs in either  
19 Region 15 or 16 in California?  
20 A: I believe there is one in 15, yes.  
21 Q: Who's the MCA in Region 15?  
22 A: I don't recall his name.  
23 Q: Would this information be contained in the  
24 map or the associated documents that you  
25 testified about earlier?

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1 A: The associated documents would list every  
2 single personnel in the field and their  
3 titles.  
4 Q: Now, the division managers don't report to  
5 the MCA; they report directly to the  
6 regional sales manager, is that correct?  
7 A: Yes, sir.  
8 Q: Do you know if there's an MCA for Region 16?  
9 A: Actually, there is an MCA in Region 16 as  
10 well.  
11 Q: Do you know his or her name?  
12 A: I know her name.  
13 Q: What is her name?  
14 A: Her name is Susan Graham.  
15 Q: I may have asked you earlier. I can't  
16 recall for sure. The Region 16 office is  
17 located in?  
18 A: I believe it's in San Francisco or some part  
19 of Oakland. I wasn't sure which -- exactly  
20 the geographic boundaries in that one was.  
21 Q: Does Lorillard have a mechanism whereby  
22 division managers or sales reps or regional  
23 managers can get back to you during the  
24 course of a marketing year and inform you,  
25 for example, "One particular brand is selling

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1 really well. We should increase our support  
2 of this brand in my area," or "Another brand  
3 is not doing very well, and we should spend  
4 less or we should do something different?"  
5 Is there a means of communicating that  
6 information to you from the various divisions  
7 and regions?  
8 MR. CRAMPTON: Objection, compound  
9 and ambiguous.  
10 Q: Do you understand the question?  
11 A: I understand that there are many, many, many  
12 parts of that question. So I need to know  
13 which part you want me to answer first.  
14 Q: I'll break it down.  
15 A: Okay.  
16 Q: First of all, let me ask you this. The  
17 marketing plan that is developed for  
18 Lorillard, is it done on an annual basis?  
19 A: It is done on an annual basis, and it's  
20 reviewed monthly.  
21 Q: Is there a plan for any period longer than  
22 one year, for example, a five-year plan?  
23 A: There have been three-year plans and  
24 five-year plans written.  
25 Q: Is there presently a three-year plan in

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1 place for Lorillard -- three-year marketing  
2 and advertising plan?  
3 A: I believe the last three-year marketing plan  
4 was done three years ago.  
5 Q: Does that mean that it just expired or is it  
6 about to expire?  
7 A: That could mean it's about to expire.  
8 Q: Is there going to be another three-year  
9 plan? Is this something that Lorillard  
10 continues to do?  
11 A: I think it's done on an occasion. It used  
12 to be done on a regular basis, but it really  
13 hasn't been done as consistently in awhile.  
14 Q: Do you know whether there's going to be a new  
15 three-year plan?  
16 A: I do not know.  
17 Q: Would you participate in the preparation of  
18 one if there is?  
19 A: Yes, I would.  
20 Q: Do you know when the present three-year plan  
21 expires?  
22 A: I'm going to say that there is a plan that  
23 will expire in 1999.  
24 Q: At the end of -- December of 1999?  
25 A: At the end of 1999, yes.

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1 Q: Did you also mention a five-year plan?  
2 A: There have been five-year plans done, but  
3 I'm not sure -- in fact, I'm not sure if the  
4 three-year plan I'm referring to is a  
5 three-year or a five-year plan. It could be  
6 one or the other.  
7 Q: Who would be the person most knowledgeable  
8 about this plan, whether it is a three-year  
9 or a five-year plan?  
10 A: I would be.  
11 Q: This three-year or five-year plan, does the  
12 document have an official name or title?  
13 A: Just Lorillard's three-year or five-year  
14 plan. It would be written one way or the  
15 other.  
16 MR. GORE: Counsel, do you know  
17 if that's been produced?  
18 MR. CRAMPTON: On April 15, Bruce  
19 Tepikian from my office sent a letter  
20 to your office which listed a number of  
21 things about production of documents,  
22 one of which was a description of how  
23 to use the 4B index to find the plans.  
24 I know it specifically referred to  
25 media plans, but you could also use

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1 that to expand if you wanted to look  
2 for three-year plans or five-year  
3 plans. All of those plans were  
4 produced in Minnesota and will be found  
5 on the 4B index.  
6 MR. GORE: Okay.  
7 Q: Back to the long question that I asked  
8 earlier. Is there a mechanism or channel of  
9 communication by which a sales rep can  
10 communicate either directly to you or through  
11 division or regional managers about the  
12 relative success or failure of a particular  
13 Lorillard marketing or advertising effort?  
14 A: Yes, a sales representative -- this is not for  
15 everything that we do, though -- for a new  
16 brand or a new kind of promotion would fill  
17 out a progress report that would report  
18 things like the number of stores that  
19 accepted it and their subjective point of  
20 view on whether it was successful or not  
21 successful and then recommendations for those  
22 type of programs in the future.  
23 They would be reported to the division  
24 manager, and the division manager's  
25 responsibility would be to see that it goes

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1 to Sales General who would turn over those  
2 reports to brand marketing for review.  
3 Q: Are these progress reports prepared on a  
4 regular or irregular basis?  
5 A: Irregular basis.  
6 Q: Irregular based upon -- what determines the  
7 frequency of how often they're prepared?  
8 A: Well, as I said, it would depend on the --  
9 on whether or not this was a new brand, a  
10 line extension going into the marketplace,  
11 and you'd want to have regular progress  
12 reports on how it was doing from the field  
13 perspective, or it could be on a different  
14 new type of promotion in the marketplace.  
15 So it would depend on whether or not those  
16 two things exist at the time.  
17 Q: The annual plan -- Lorillard's annual plan  
18 that you testified about earlier, is it  
19 correct that you said that it is reviewed  
20 monthly?  
21 A: There is a monthly staff meeting that reviews  
22 not necessarily the brand plan, but the  
23 highlights of the brand plan.  
24 Q: Is there a one-year marketing or advertising  
25 plan prepared for each brand?

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1 A: There would be one prepared for each brand  
2 that has gotten marketing dollars to spend,  
3 yes.  
4 Q: I'm sorry, I didn't follow you. That has  
5 gotten marketing knowledge to --  
6 A: Marketing dollars.  
7 Q: Marketing dollars to spend?  
8 A: Yes.  
9 Q: Those brands would include which ones from  
10 Lorillard?  
11 A: It would be Newport, Kent, Old Gold and  
12 Maverick.  
13 Q: Who presides over these -- or is there --  
14 when they're evaluated monthly, is there a  
15 meeting held where they're discussed?  
16 A: The president of the company has a monthly  
17 staff meeting.  
18 Q: Who attends these meetings other than the  
19 president?  
20 A: It's attended by the heads of each  
21 department and the key players that are  
22 involved in the marketing plans.  
23 Q: When you say "the heads of each department,"  
24 that would include yourself?  
25 A: I'm not the head of the department I work

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1 in; but it would include me, yes.  
2 Q: When does Lorillard's current annual  
3 marketing plan expire?  
4 A: We write marketing plans on a calendar year  
5 basis.  
6 Q: Now, do you participate personally in the  
7 preparation of those plans?  
8 A: Every single phase of development.  
9 Q: For all brands or just certain brands?  
10 A: I will participate in all phases of  
11 development for Newport, Kent and True; and  
12 I am knowledgeable to what's going on for all  
13 the other brands. Not on a day-to-day basis  
14 but on an overall basis, meaning, in this  
15 case, Old Gold and Maverick.  
16 Q: Who is responsible for interfacing with the  
17 advertising agency in creating Lorillard's  
18 media ads that are going to be used in the  
19 state of California?  
20 A: It would be myself.  
21 Q: Anyone else?  
22 A: Yes, in fact, all of the brand people on an  
23 occasion, if not on a day-to-day basis, would  
24 be talking with the advertising agencies for  
25 a number of different reasons.

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1 Q: You personally participate in the advertising  
2 -- strike that.  
3 Is the advertising and marketing  
4 budget, the number of dollars that are going  
5 to be spent -- is that part of Lorillard's  
6 annual marketing plan?  
7 A: Yes, it is.  
8 Q: Do you participate in the creation of that  
9 budget?  
10 A: I testified yesterday that the actual dollar  
11 amounts for each brand are given to us  
12 directly from the president of the company.  
13 It's our job to take those dollars and to  
14 rationalize how those dollars would be spent  
15 across all forms of marketing.  
16 Q: That is done -- that rationalization is done  
17 on a brand-by-brand basis?  
18 A: It would -- yes, it would be done on a  
19 brand-by-brand basis.  
20 Q: Is it done to any extent on a regional basis?  
21 A: No, we do not do -- other than the fact  
22 that, you know, our brand marketing strategy  
23 is broken down on a geographic basis, other  
24 than that, on a division or a state basis,  
25 no, we do not.

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1 Now, I do need to clarify one thing.  
2 When it comes to merchandising payments,  
3 display dollars that we spend, there is a  
4 budget that is prepared for the total company  
5 in terms of how many dollars would be spent  
6 based on how many dollars have been spent in  
7 the past. Strictly budgetary to know how  
8 much money is needed in order to support our  
9 merchandising plans.  
10 Q: Who prepares those plans?  
11 A: Well, that budget would be prepared by the  
12 sales department in Greensboro.  
13 Q: Who is the head of that department?  
14 A: The head of that department is Randy Spell.  
15 Q: Spell?  
16 A: Yes, S-p-e-l-l.  
17 Q: Is there any way of determining how much  
18 money Lorillard spent advertising and  
19 otherwise promoting its products in the state  
20 of California during the calendar year 1997?  
21 A: Yes, probably we could determine for the  
22 current year, maybe the year before, meaning  
23 1997 in this case, approximately how many  
24 dollars were spent in the state of California.  
25 Q: Who's the person most knowledgeable about

1 that issue?  
2 A: About what issue?  
3 Q: About determining the number of dollars spent  
4 by Lorillard marketing, advertising,  
5 otherwise promoting its products in the state  
6 of California during calendar year 1997.  
7 A: Well, let me point out to you that we do not  
8 look at dollars that way to start. So there  
9 is no information that exists that would say  
10 in the state of California this is how many  
11 dollars were spent in the areas of promotion  
12 or in advertising or in merchandising. They  
13 don't exist. Could they be gotten? Possibly.  
14 That was part of the meetings I had  
15 prior to this deposition, could those dollars  
16 be gotten, and the only form of dollars that  
17 we're able to retrieve without going through  
18 an awful lot of extra work, not even knowing  
19 if it could be done, were the dollars that  
20 you see clearly in Exhibit 2 and 3 from  
21 yesterday and also the advertising in terms  
22 of outdoor advertising dollars that have been  
23 recently discovered that might give you some  
24 insight into how many dollars were spent on a  
25 state basis or on a division basis for some

1 prior years.  
2 But we do not look at our dollars that  
3 way. So that -- those type of dollars are  
4 not readily accessible.  
5 Q: Is it possible to determine the advertising,  
6 marketing and promotion budget for each  
7 Lorillard brand nationally for calendar year  
8 1997?  
9 A: Yes, and I believe also we went through that  
10 yesterday as well. If you remember, dollars  
11 were asked for individual brands for 1997  
12 and I think current year.  
13 Q: I want to show you a document that appears  
14 to have been marked as Exhibit 1, Lindsley,  
15 but not, I don't believe, in this deposition.  
16 It looks like it was marked as Exhibit No. 1  
17 in another deposition.  
18 MR. GORE: Counsel, do you know --  
19 MR. CRAMPTON: This might be Arch.  
20 MR. ARNOLD: It was either Arch or  
21 Minnesota.  
22 MR. CRAMPTON: Yes.  
23 MR. ARNOLD: It was provided to  
24 us with the transcripts of one of those.  
25 MS. TEDDER: Which one? Would

1 you tell us if you have it? It's your  
2 document. You've got the transcript.  
3 MR. GORE: For purposes of the  
4 question here today, it doesn't really  
5 matter. We can go ahead and mark it as  
6 an exhibit to this deposition.  
7 MR. CRAMPTON: It appears to be a  
8 composite exhibit with multiple  
9 documents in it; and assuming that this  
10 is Exhibit 1 from the Arch deposition,  
11 you're not going to re-ask questions  
12 that were asked in the Arch deposition  
13 as to this document?  
14 MR. GORE: No. No, I don't  
15 intend to do that.  
16 MR. CRAMPTON: Okay. Do you --  
17 sorry.  
18 MR. GORE: Well, let's mark what  
19 we have before us. I believe that will  
20 be Exhibit No. 7, is that correct?  
21 Q: (By Mr. Gore) Could you take a moment and  
22 look this over and --  
23 MR. CRAMPTON: Do you have a  
24 third copy of that?  
25 MR. GORE: I sure do.

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<p>1 [PLAINTIFF'S DEPOSITION EXHIBIT NO. 7 2 MARKED FOR IDENTIFICATION] 3 [WITNESS EXAMINES DOCUMENT] 4 Q: Have you had a chance to look it over? 5 A: Yes, I have. 6 Q: Have you seen this document before? 7 A: I believe I have. 8 Q: What is it? 9 A: It is a compilation of a bunch of different 10 things that I believe came out of one my 11 files and had been stapled together as one, 12 and it is the advertising code that we 13 referred to yesterday and a series of other 14 things related to sampling and to advertising 15 and the anti-trust code for Lorillard that 16 we're asked to keep a copy of and a bunch of 17 other things related to litigation, I believe. 18 In fact, there's the office leases. 19 There are a whole bunch of different things, 20 and I'm not really sure where this came from. 21 But I did have this copy somewhere in my 22 files. 23 Q: When you say that it was stapled together, 24 do you mean that it was stapled together in 25 this form in your file?</p>	<p>1 produced in Minnesota. It's in the 2 depository. 3 MR. GORE: Okay. 4 Q: (By Mr. Gore) Do you know whether Lorillard's 5 position with respect to the marketing of 6 its products to underage individuals -- not 7 its position, but its regulations are 8 expressed in the Lorillard marketing manual? 9 A: Well, for one, let's make it clear that we 10 don't market our products to underage 11 individuals. 12 Q: I understand. 13 A: Okay. And there are very specific 14 guidelines in here in terms of how to 15 develop advertising and how to sample our 16 product and how to promote our product to 17 people that are of legal age. 18 Q: When you say "in here," do you mean in this 19 Lorillard marketing code? 20 A: Well, definitely in the marketing manual 21 there is very detailed information; and I 22 believe a good portion of that is here as 23 well. 24 Q: There was something that you testified about 25 yesterday which I think you described it as</p>
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<p>1 A: I believe it was, yes. 2 Q: Other than this document, are you aware of 3 any other marketing or advertising or 4 promotion codes that Lorillard has or follows 5 in the state of California? 6 A: There is a book called the marketing manual 7 that the brand group refers to on a daily 8 basis that includes a good amount of this 9 information, but also very specific detailed 10 information in regards to warning labels on 11 our brands, target -- excuse me, T and N 12 numbers that are current. 13 Q: I'm sorry. What kind of numbers? 14 A: Tar and nicotine numbers that are current 15 and how they're supposed to be used based on 16 the type of media form and the size of that 17 media form in terms of the size of the 18 warning or the size of the T and Ns. 19 Q: This marketing manual, does it have an 20 official name or -- 21 A: It's called Lorillard's marketing manual. 22 MR. GORE: Counsel, is this one 23 of the documents that's also available 24 on that index? 25 MR. CRAMPTON: Right. It was</p>	<p>1 the 500-foot rule? 2 A: Yes, sir. 3 Q: And as I recall, that was a prohibition 4 against billboard or other outdoor 5 advertising within 500 feet of places where 6 youths gathers such as schools, churches, and 7 I believe there were other types of places. 8 A: Playgrounds. 9 Q: Playgrounds. Thank you. Do you recall that 10 testimony? 11 A: Yes, I do. 12 Q: Is there any similar 500-foot rule or any 13 other type of rule that would apply to the 14 placement of in-store promotional materials 15 such as displays? 16 MR. CRAMPTON: Objection. This was 17 covered yesterday as well. 18 Q: Do you understand the question? 19 A: Yes, I do. I'll need you to clarify 20 something in a moment for me, but for one 21 I'll tell you that the 500-foot rule -- that 22 is a general rule -- is superseded by 23 specific state laws, if there happens to be 24 one. And I do know that in the state of 25 California there is a 1,000-foot rule, okay,</p>

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1 that we abide by.  
2 And I'm a little bit unclear in terms  
3 of what you're asking me as far as a  
4 500-foot rule in a retail environment. I'm  
5 not quite sure how you can apply a 500-foot  
6 rule or something like that to a retail store.  
7 Q: Oh, what I'm asking is if Lorillard follows a  
8 rule that it will not place a billboard or  
9 other outdoor advertising within 500 feet of  
10 schools, playgrounds and churches, or in the  
11 case of California 1,000 feet, is there a  
12 similar rule that Lorillard follows with  
13 respect to the placement of any kind of  
14 in-store promotional displays?  
15 I'm thinking of, for example, a 7-11  
16 store located within -- in California within  
17 1,000 feet of a playground. Is there a rule  
18 that prohibits Lorillard from locating  
19 in-store promotional materials within 1,000  
20 feet of playgrounds, schools and churches?  
21 MR. CRAMPTON: Objection. I  
22 guess the objection is asked and  
23 answered because it was covered  
24 yesterday and also compound.  
25 Q: Do you understand what I'm asking?

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1 A: I understand it, and the answer is no, there  
2 is no rule to prohibit us from doing that.  
3 I mean, these are retailers that have a right  
4 to sell tobacco products. We have a right  
5 to support our brands in those locations,  
6 and keep in mind now it is the retailer's  
7 responsibility to be sure that people are  
8 carded before they purchase any tobacco  
9 products so it's clear that they are of age  
10 to do so.  
11 Q: Just so I'm clear, so the 500-foot rule or  
12 1,000-foot rule applies solely to billboards  
13 and other types of outdoor advertising, is  
14 that correct?  
15 A: It applies to billboard advertising, period.  
16 Q: Are there other types of outdoor advertising  
17 other than billboards to which that rule does  
18 not apply?  
19 A: Well, I would say that it wouldn't apply to  
20 any form of transit advertising because you  
21 can't restrict where transit advertising  
22 goes; but any kind of stationary outdoor  
23 advertising vehicle, it would clearly apply  
24 to that.  
25 Q: In your mind, does billboard mean stationary?

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1 Is that what billboard means, or does it have  
2 to do with size?  
3 A: No, a billboard could be on a bus. Well,  
4 stationary means that it is nailed down to,  
5 you know, where -- the location. It's not  
6 -- it doesn't move about. That would be  
7 considered a stationary outdoor advertisement.  
8 Q: Is there any prohibition on Lorillard placing  
9 a small sign, a two-foot by three-foot sign,  
10 in the window of a retailer in the state of  
11 California within 1,000 feet of a school?  
12 A: For one, let's make it clear that that type  
13 of piece that you're referring to is not  
14 considered outdoor advertising. That is part  
15 of point-of-sale advertising, things that go  
16 physically in the store or are attached to  
17 the outside of the store. So it is not  
18 outdoor advertising. It is point-of-sale  
19 advertising.  
20 Specifically to the state of  
21 California, I know -- although I don't know  
22 in detail -- that there are many, many  
23 restrictions, as there are in Massachusetts,  
24 in terms of display and point-of-sale  
25 advertising; and if that type of restriction

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1 existed around playgrounds, we would have --  
2 we would be abiding by it. But specifically  
3 do they exist? I don't know. If they do  
4 exist, we do, you know, abide by the law.  
5 Q: Is it generally Lorillard's policy to follow  
6 whatever regulations or local ordinances  
7 apply to the advertising, marketing, sale and  
8 other promotion of its products?  
9 A: If there are laws in a particular community  
10 that restrict how we do business, absolutely.  
11 Q: Does Lorillard have anything like a compliance  
12 department or some department or division  
13 within the company that is responsible for  
14 making sure that Lorillard observes the laws  
15 and ordinances that apply to the sales and  
16 promotion of its products in the state of  
17 California?  
18 A: If you're referring to the area of outdoor  
19 advertising, we have a group -- or one or  
20 two people in the media department that  
21 actually travel the country looking at our  
22 outdoor advertising to make sure that we are  
23 within regulation and that there are no  
24 issues involved with our boards.  
25 As it applies to the retailer, meaning



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<p>1 displays and point-of-sale at a retail 2 location, our field representatives, which 3 make calls on a daily basis to all retailers 4 over a period of time, are responsible for 5 being sure that any type of local ordinance 6 or restrictions are abided by, as are their 7 division managers and so forth and so on. 8 MR. CRAMPTON: I just want to 9 raise a potential ambiguity with the 10 last couple of questions where you have 11 referred to sale. Sale -- I'm not sure 12 how you mean it, but it could mean 13 Lorillard's sale to distributors or 14 retailers. But you could also be 15 referring to sale by retailers to 16 consumers, which of course Lorillard 17 doesn't do. As I heard it, I was 18 assuming it was sale by Lorillard to 19 Lorillard's customers. 20 MR. GORE: Correct. 21 Q: (By Mr. Gore) That's how I intended it 22 because you had made clear yesterday during 23 the deposition that Lorillard doesn't 24 actually sell its products to the end user. 25 It is through distributors or retailers.</p>	<p>1 when she needed to and a gentleman by the 2 name of Terry -- I want to say Terry Rogers, 3 but I question the last name -- whose job 4 specifically is to do that. 5 MR. GORE: Could I ask that at 6 some point -- it doesn't have to be 7 immediately -- you find out if Terry 8 Rogers -- if that's the correct name so 9 that we can get that correctly on the 10 transcript? 11 MR. CRAMPTON: Well, we can check 12 into it. I don't think it's 13 particularly relevant, but we can take 14 a check at -- we can check at it when 15 we take a break. 16 MR. GORE: Okay. 17 Q: (By Mr. Gore) Pat Nichalsaisen and Terry 18 Rogers, they both work here in Greensboro? 19 A: Yes, they do. 20 MR. GORE: Could we take a short 21 break? Would this be -- 22 MR. CRAMPTON: Sure. Do you want 23 to -- we can go off the record. 24 VIDEOGRAPHER: Off the record at 25 11:37.</p>
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<p>1 A: Yes, that's true. 2 Q: You said there is a group or a couple of 3 people in the -- I should have your answer 4 read back. Unless you can -- 5 A: Media Services. 6 Q: Media services. They travel throughout -- 7 this is not just California; this is the 8 whole country? 9 A: Uh-huh (yes). 10 Q: To ensure compliance with Lorillard's 11 advertising and marketing codes? 12 A: Yes, and we went into the details of that 13 yesterday as well too in terms of the use of 14 the Kelly girls, the use of one or two 15 individuals at Lorillard and the use of the 16 outdoor billboard companies that we buy space 17 from in terms of regulating where our 18 outdoor advertising goes. 19 MR. CRAMPTON: That subject was 20 also covered in the Arch deposition. 21 MR. GORE: Okay. 22 Q: Do you know who the individuals are who make 23 up this group or who the two individuals are? 24 A: Well, it would be Pat Nichalsaisen, who is the 25 director of Media Services, would go out</p>	<p>1 [RECESS - 11:37 A.M. TO 12:34 P.M.] 2 VIDEOGRAPHER: We're on the record 3 at 12:34. 4 MR. CRAMPTON: Before we start, I 5 wanted to tell that the map depicting 6 area and regional breakdown was 7 produced in Minnesota and is available 8 to both of you in Massachusetts and 9 California. The document bears the 10 Bates number 91076460. 11 MR. GORE: One Bates number? 12 MR. CRAMPTON: Yeah. Yeah, and 13 there are surrounding documents around 14 it too and other documents about the 15 same subject that are before and after 16 it in the collection. 17 MR. GORE: That's the other 18 documents that Mr. Lindsley was 19 referring to? 20 MR. CRAMPTON: I'm sorry, I don't 21 know for sure. I assume they are, but 22 I don't know for sure. 23 MR. GORE: Okay. 24 MR. CRAMPTON: Because when we 25 took the break, I had asked for the map.</p>

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1 MR. GORE: Right.  
 2 MR. CRAMPTON: And that's what I  
 3 got back.  
 4 MR. GORE: Okay.  
 5 MR. ARNOLD: I would -- as I  
 6 indicated I would during the break,  
 7 just to make one statement. I have no  
 8 desire to engage in an argument or  
 9 discussion on it. There have been a  
 10 number of references to documents which  
 11 have been produced into the Minnesota  
 12 depository through the 4B index, the  
 13 ability to locate them and sufficient  
 14 production.  
 15 I know that's an issue which has  
 16 been raised in Massachusetts -- I think  
 17 I'm speaking for Mr. Gore as well -- as  
 18 to the adequacy of that production and  
 19 the ability to use -- the confidence  
 20 level you have in using the 4B index in  
 21 finding the documents in the depository.  
 22 I just want to note that my  
 23 silence in -- to those issues should  
 24 not be consent by the Commonwealth that  
 25 it's in fact sufficient.

1 MR. CRAMPTON: All right. And  
 2 for the record, we have provided both  
 3 of you with assistance on how to do the  
 4 searches to collect at least certain  
 5 documents in connection with this  
 6 deposition. The media plan is what I'm  
 7 thinking of, and there was  
 8 correspondence with both of you on  
 9 other ways of searching for documents.  
 10 MR. ARNOLD: Yes.  
 11 MR. CRAMPTON: Also Rogers.  
 12 WITNESS: Yes, it's -- I mixed  
 13 two people together.  
 14 A: The gentleman's name is Terry Shanahan.  
 15 Q: (By Mr. Gore) Shanahan?  
 16 A: Shanahan.  
 17 Q: And who's Rogers?  
 18 A: Used to be another person that did the same  
 19 thing, but did it out of New York and did  
 20 not move to Greensboro with us here.  
 21 Q: He's not with the company anymore?  
 22 A: He's no longer with the company.  
 23 Q: Thank you. Mr. Lindsley, the two exhibits,  
 24 Exhibits 2 and 3, do you have copies of  
 25 those that you can look at?

1 A: I do not.  
 2 Q: Well, you may not need to. Exhibit 2 is  
 3 entitled "Lorillard Merchandising Overview" --  
 4 MR. CRAMPTON: I'm handing him  
 5 the copies of Exhibits 2 and 3 from  
 6 yesterday.  
 7 Q: -- "California - Massachusetts, Prior  
 8 Merchandising Program, January 1975 through  
 9 June 1997," and then the next document,  
 10 Exhibit 3, is entitled, "Lorillard  
 11 Merchandising Overview, California -  
 12 Massachusetts, Current Merchandising  
 13 Program." Now, is it correct to say that  
 14 there was a change in Lorillard's  
 15 merchandising program sometime after June  
 16 1997?  
 17 A: Yes, that's fair.  
 18 Q: And there was a new merchandising program put  
 19 in place?  
 20 A: As of July of 1997.  
 21 Q: Is this a national merchandising program?  
 22 A: Yes, they both are.  
 23 Q: Were you involved in the changeover from the  
 24 old plan to the new plan?  
 25 A: In what way?

1 Q: In any way.  
 2 A: With just some general discussions internally  
 3 on how to improve some of our merchandising  
 4 plans; but I was not the author of these, no.  
 5 Q: Who was the author of these?  
 6 A: I believe Bob Calderella, who is our director  
 7 of merchandising, was responsible for  
 8 recommending merchandising plans for the  
 9 company.  
 10 Q: Just so we're clear, I assume Mr. Calderella  
 11 was the author -- or perhaps one of the  
 12 authors for the current merchandising  
 13 program, but he may not have been the author  
 14 for the merchandising program put into place  
 15 in January of 1975?  
 16 A: That's right, he would not be.  
 17 Q: Are you personally familiar with any reasons  
 18 why a new merchandising program was put into  
 19 place in July of 1997?  
 20 A: I could tell you the main reason why, yes.  
 21 Q: Okay, please do.  
 22 A: The main reason why is for Lorillard to be --  
 23 to compete with other manufacturers and other  
 24 brands at retail. We had to strengthen the  
 25 quality and the variety of our merchandising

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1 programs.  
2 Q: Could you summarize the main differences  
3 between the two programs?  
4 A: In general, the current program breaks down  
5 more specifically programs based on the  
6 individual needs of certain kinds of  
7 retailers in the marketplace.  
8 Q: Both of these merchandising programs, the old  
9 one was available in the California and the  
10 new one currently is available in California,  
11 is that correct?  
12 A: Yes, sir.  
13 MR. CRAMPTON: Are you finished  
14 with those two exhibits?  
15 MR. GORE: Yes.  
16 MR. CRAMPTON: Thank you.  
17 Q: Does Lorillard test consumer reaction to any  
18 of its advertising or promotion in California?  
19 A: Specifically in the state of California?  
20 Q: Yes.  
21 A: No, not only in the state of California.  
22 Q: When you say "not only in the state of  
23 California," does it test consumer reaction  
24 to its advertising and marketing in the state  
25 of California and possibly other states as

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1 well?  
2 A: Yes, and I'm sure there have been research  
3 projects over time that have -- the attempt  
4 would have been to get a better  
5 understanding of a particular campaign; and  
6 there might have been, as part of the total  
7 sample size, some people from a variety of  
8 different states.  
9 That information is typically not used  
10 as a perspective on a state because the base  
11 size would be too small to get any actual  
12 information; but in totality, the research  
13 study would give you a strong enough base  
14 size to give you some direction in terms of  
15 whether or not a certain type of promotion  
16 or advertisement is effective.  
17 Q: Can you recall any of this type of study, a  
18 test of consumer reaction to Lorillard  
19 marketing or advertising, that was conducted  
20 in California?  
21 A: No, I can't remember anything specifically  
22 that was done that would have included  
23 anything from California -- oh, no, I'll  
24 change -- let me change that for a minute.  
25 Yes, I do. There was a menthol segmentation

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1 study that we did for the total menthol  
2 category that had some representative sample  
3 from California among probably about  
4 30-some-odd other states.  
5 Q: When was the study done?  
6 A: Three to four years ago.  
7 Q: Were you involved in conducting this study?  
8 A: Physically conducting it? No.  
9 Q: Were you involved in any way with it?  
10 A: I was involved with the development of the  
11 research study and approved it.  
12 Q: Who actually conducted the study?  
13 A: It was an outside research company, and the  
14 name of that company doesn't come to mind  
15 instantly.  
16 Q: Is there someone else other than yourself  
17 who would know the name of that company?  
18 A: Yes, in fact, I believe the company initials  
19 were MCR Associates, but I don't know what  
20 that stands for. The person that would know  
21 exactly what that stands for would be a  
22 gentleman by the name of Scott Benson.  
23 Q: Benson?  
24 A: Benson, B-e-n-s-o-n.  
25 Q: What is his position?

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1 A: He is the manager of consumer research.  
2 Q: For Lorillard?  
3 A: For Lorillard, yes.  
4 Q: Where does he work?  
5 A: Also here in Greensboro.  
6 Q: Can you recall any other studies conducted in  
7 California?  
8 A: Where California was part of the sample?  
9 No, I cannot.  
10 Q: The menthol study, do you know what the  
11 purpose of that study was?  
12 A: Sure I do.  
13 Q: What was the purpose?  
14 A: The purpose of that study was to give  
15 Lorillard a complete look at the total  
16 menthol category in terms of brands  
17 associated with menthol cigarettes and their  
18 taste appeal among menthol smokers in general.  
19 Q: In California in the menthol market, what  
20 are -- who are Newport's primary competitors?  
21 A: They would be the same that are everywhere  
22 actually, not specific to California. But in  
23 general, Newport's competitors would be Kool  
24 cigarettes, Salem cigarettes and Marlboro  
25 Menthol cigarettes.

1 Q: Is there a document or any other way to  
2 determine Lorillard's market share for each  
3 of its brands in the state of California?  
4 A: Yes.  
5 Q: What document would that be or what method  
6 would that be?  
7 A: Well, the method would be our computers,  
8 where our sales information is available on a  
9 daily basis, could give us sales on a  
10 division basis and sales on a state basis for  
11 any of Lorillard's brands as well as any  
12 brands in the industry.  
13 Q: So you're able to track not only Lorillard's  
14 sales but sales of Philip Morris and other  
15 companies?  
16 A: Yes, sir.  
17 Q: This is somewhat unrelated, but how do you  
18 get their sales figures?  
19 A: Their sales figures are reported to a  
20 company called MSA. All tobacco companies  
21 report their sales to this one company that  
22 puts together information in both hard copy  
23 form and accessible through our computer  
24 system.  
25 MR. CRAMPTON: We have produced

1 MSA data for Lorillard brands I'm  
2 certain in Massachusetts. I'm not so  
3 sure about California, but we've done  
4 it in other states as well.  
5 MR. GORE: Okay.  
6 Q: Do you know where MSA is located?  
7 A: I'm guessing, but I believe it's in New  
8 Jersey.  
9 Q: This information that they compile on tobacco  
10 sales, is it available to the public?  
11 A: I do not know if it is or not.  
12 Q: What's the right terminology for me to refer  
13 to the data that you get from MSA? Is there  
14 a name for it? Does it have a report name?  
15 A: We really just refer to it as MSA.  
16 Q: The MSA?  
17 A: Yeah, the MSA report.  
18 Q: The MSA report. Okay.  
19 A: Right.  
20 Q: Does it include, for example, sales of  
21 Lorillard's products on a state-by-state  
22 basis?  
23 A: It does not include that information, but  
24 we're able to manipulate that information to  
25 give us that.

1 Q: But that's something that you do at  
2 Lorillard; that's not something that MSA does  
3 in preparing its report?  
4 A: Okay. And it's not necessarily something we  
5 do at Lorillard either. It can be done if a  
6 brand person or someone in the company  
7 requested information on a state-by-state  
8 basis, because we look at our marketing areas  
9 by divisions. We've already made that clear.  
10 Q: In what form does the MSA report provide you  
11 with information about the sales of  
12 Lorillard's products? Is it just nationally?  
13 A: No, that information is broken down to us by  
14 our divisions.  
15 Q: The MSA report is in divisional format?  
16 A: It could be. Yes, it could be in any format  
17 we choose. It could be divisional. It  
18 could be on a region basis. It could be on  
19 an area basis. It could be on a state basis  
20 if we asked for it that way.  
21 Q: How often is the MSA report produced?  
22 A: The MSA database is updated on a monthly  
23 basis on our computer, and I think the report  
24 is also issued in a condensed version monthly  
25 and then a quarterly report issued that would

1 look at more specific information by  
2 competitive brands by division.  
3 Q: Does this report come to you at Lorillard?  
4 A: This report, among other people, yes, would  
5 come to me, the monthly report and the  
6 quarterly report.  
7 Q: Are there other methods by which you  
8 determine the amount of Lorillard's sales of  
9 its products, or do you generally rely on the  
10 MSA report?  
11 A: No, actually we have another system --  
12 alternative system in addition to MSA that  
13 we are currently using as well.  
14 Q: What is that system called?  
15 A: That system is called the Excel database.  
16 Q: Is there a company named Excel that produces  
17 the Excel database?  
18 A: No, it's what we call the program or the  
19 system.  
20 Q: Is this something -- this database is kept  
21 in-house at Lorillard?  
22 A: This database, I believe, goes directly to  
23 MSA; and MSA provides tapes to our company  
24 that we use for the purpose of analysis.  
25 Q: Is the database located -- is it physically

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1 located somewhere?  
2 A: Yes, it's on our computer system.  
3 Q: Here in Greensboro?  
4 A: It will be. It might be currently up in New  
5 York because a lot of our equipment is still  
6 being operated from New York, but either  
7 it's there or it is here or it will be here  
8 in Greensboro shortly.  
9 Q: Are there any other methods other than the  
10 -- strike that.  
11 What's the main difference between the  
12 MSA report and the Excel database report?  
13 A: The MSA report reports shipments to our  
14 customers. The Excel report reports outgoing  
15 sales from customers to retailers.  
16 Q: From customers to retailers?  
17 A: Right.  
18 Q: The customers being who?  
19 A: The people that buy cigarettes from us.  
20 Q: They are distributors or --  
21 A: Yes, you can call them distributors of our  
22 brand. Just our customers. Anybody that  
23 buys cigarettes from us.  
24 Q: Directly from you?  
25 A: Yes, the people that sell -- the people that

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1 they sell their cigarettes to, that's the  
2 information that we get from them.  
3 Q: Is there any sort of program or database  
4 that tracks sales by retailers to end users?  
5 A: The Excel database is as close as we can get  
6 because you would assume that a retailer only  
7 buys what they can sell. However, there is  
8 another syndicated company that we get  
9 information from called IRI, supermarket data.  
10 Q: I --  
11 A: IRI.  
12 Q: IRI?  
13 A: Yeah, supermarket scanner data is what it is.  
14 Q: IRI, is that a company somewhere?  
15 A: Yes, it is.  
16 Q: Where is IRI located?  
17 A: I want to say Chicago, but I'm guessing.  
18 Q: Is there anyone other than yourself who  
19 would know where IRI is located?  
20 A: Yes.  
21 Q: Who is that?  
22 A: The person that would give you their exact  
23 address would be Susan Smith.  
24 Q: Susan Smith?  
25 A: Uh-huh (yes).

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1 Q: Is she an employee of Lorillard?  
2 A: Yes, she is.  
3 Q: What is her position?  
4 A: She's manager of sales analysis.  
5 MR. CRAMPTON: I just want to  
6 point out again that this whole area,  
7 the MSA data, reports on sales and  
8 market shares is not within the scope  
9 of this deposition notice here.  
10 MR. GORE: Okay.  
11 Q: Can you tell me generally what information  
12 you get from the IRI report?  
13 A: I can tell you specifically the information  
14 we get. It reports sales from supermarkets  
15 to the consumer among a representative sample  
16 of supermarkets that allow IRI to set up the  
17 system in their computer system that allows  
18 the scanning of individual products to be  
19 reported directly to IRI for analysis.  
20 Q: How often do you receive that report?  
21 A: That report is also available to us on a  
22 four-week basis.  
23 Q: So that report, as I understand it, it only  
24 applies to sales in stores where there are  
25 scanners. If a product is rung up on an

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1 ordinary cash register, then it's not going  
2 to be reflected in the IRI report?  
3 A: Exactly.  
4 Q: Can you generally describe for me Lorillard's  
5 current advertising campaign for Newport?  
6 A: When you say "generally describe," what are  
7 you looking for?  
8 Q: I'm looking for a description of the themes  
9 in the media print ads, the most prominent  
10 features of the ad campaign and whether  
11 there are any particular slogans associated  
12 with that campaign.  
13 A: Okay. As far as prominent features within  
14 that ad campaign, it would depend on the  
15 layout, whether it was a billboard or whether  
16 it was a magazine page. The elements would  
17 be the same. Just that they might appear  
18 differently on the page, and that is based on  
19 the size that you have to work with.  
20 On occasion things like the brand name  
21 Newport, which is typically the most  
22 prominent in the advertisement is the brand  
23 name, could be bigger or could be smaller.  
24 Again, it depends on the size of the  
25 particular advertisement that you're

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<p>1 developing. It also depends on the size of</p> <p>2 the visual that you're working with.</p> <p>3 There is typically in Newport</p> <p>4 advertising, the brand name, the word</p> <p>5 "pleasure" or the slogan "alive with</p> <p>6 pleasure" and a visual of people, you know,</p> <p>7 doing things that are pleasurable and</p> <p>8 sometimes, but not all the time, a pack of</p> <p>9 cigarettes. And most recently we've</p> <p>10 incorporated the copy line, which is a tag</p> <p>11 line usually over the product, called "fire</p> <p>12 it up."</p> <p>13 Q: The types of features that you just</p> <p>14 described, are they used in Newport billboard</p> <p>15 advertising in California?</p> <p>16 A: Yes, they are.</p> <p>17 Q: Is this part of the calendar year 1998</p> <p>18 marketing plan?</p> <p>19 A: The use of this in California?</p> <p>20 Q: The features that you've just described in</p> <p>21 the Newport advertising. We're now in the --</p> <p>22 you testified before that your marketing plan</p> <p>23 operates on a calendar year basis, so I</p> <p>24 assume we are presently within the 1998</p> <p>25 calendar year --</p>	<p>1 of this year?</p> <p>2 A: Currently the agency of record is Avrett,</p> <p>3 Free &amp; Ginsberg; and right now you're just</p> <p>4 going through the transition period.</p> <p>5 Q: Do you know why a change is being made from</p> <p>6 one agency to the other?</p> <p>7 A: Yes.</p> <p>8 Q: Why?</p> <p>9 A: That change is being made because the creative</p> <p>10 director took a job with Avrett, Free &amp;</p> <p>11 Ginsberg. So we have chosen to move our</p> <p>12 business from Compton Partners along with him</p> <p>13 to another agency.</p> <p>14 Q: If marketing plans run on a calendar year</p> <p>15 basis, for example, during what months of</p> <p>16 1997 was the 1998 marketing plan developed?</p> <p>17 A: The marketing plan for the next year, the</p> <p>18 development of that begins the month of June</p> <p>19 and continues through approval process,</p> <p>20 typically at the end of September.</p> <p>21 Q: Then the actual placement of the advertising</p> <p>22 and promotion starts in January or at some</p> <p>23 earlier time?</p> <p>24 A: January.</p> <p>25 Q: Can you generally describe the current</p>
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<p>1 A: Yes.</p> <p>2 Q: -- for your marketing plan?</p> <p>3 A: Yes.</p> <p>4 Q: What does -- what's the significance or</p> <p>5 meaning of "fire it up" as it's used in</p> <p>6 Newport advertising?</p> <p>7 A: The consumers interpret that as meaning a</p> <p>8 call to action, light up a cigarette, light</p> <p>9 up a Newport.</p> <p>10 Q: Do you know who conceived the idea for the</p> <p>11 "fire it up" slogan?</p> <p>12 A: Yes, I do.</p> <p>13 Q: Who?</p> <p>14 A: The "fire it up" language was a</p> <p>15 recommendation by Compton Partners, which at</p> <p>16 that time was Newport's advertising agency in</p> <p>17 New York City.</p> <p>18 Q: At that time being when? When was at that</p> <p>19 time?</p> <p>20 A: Compton Partners was our agency through</p> <p>21 actually -- well, continued to be our agency</p> <p>22 through the end of August of this year and</p> <p>23 has been our agency for a period of about</p> <p>24 four years.</p> <p>25 Q: Who's going to be your agency after August</p>	<p>1 marketing plan for Kent -- Lorillard's Kent</p> <p>2 brand?</p> <p>3 A: Yes, we talked a little bit about this</p> <p>4 earlier. Kent's marketing plan is being</p> <p>5 executed in -- I'll throw you out regions --</p> <p>6 Region 11, which is Minneapolis; Region 17,</p> <p>7 which is the northern part of Florida; and</p> <p>8 Region 21, which is the state of New York,</p> <p>9 and in some select divisions around the</p> <p>10 country.</p> <p>11 Q: But not in California?</p> <p>12 A: I believe that Los Angeles is one of those</p> <p>13 select divisions that are also part of the</p> <p>14 plan.</p> <p>15 Q: Is there a particular advertising theme or</p> <p>16 slogan associated with Kent's marketing plan?</p> <p>17 A: Yes, but it's a promotional driven concept.</p> <p>18 Kent does not advertise in outdoor or in</p> <p>19 print. Kent's plan is strictly a promotional</p> <p>20 program that involves both retail placement</p> <p>21 by our sales force and a series of</p> <p>22 free-standing inserts delivered in the Sunday</p> <p>23 newspaper. The slogan for Kent is, "Nothing</p> <p>24 else tastes like Kent."</p> <p>25 Q: Can you describe the current marketing and</p>

1 advertising plan for Lorillard's Maverick  
2 brand?  
3 A: Yes, I can. Again, also in the select  
4 geography that we talked about Maverick  
5 advertising plan currently features the pack  
6 and a vista visual, just a nice picture to  
7 look at, with a big falcon which is the  
8 symbol that is on the pack of cigarettes.  
9 And I believe the current copy reads, "Great  
10 value. Great taste."  
11 Q: Do you know whether that advertising campaign  
12 is being executed in any part of California?  
13 A: Currently I believe it is not.  
14 Q: Finally, what can you tell me generally about  
15 the promotional campaign for Lorillard's Old  
16 Gold brand?  
17 A: Okay, you went from advertising to promotion.  
18 Are you interchanging these words?  
19 Q: No, I have here in my notes that Old Gold is  
20 a brand in which zero dollars are spent on  
21 advertising and the money is spent on other  
22 types of promotional activities.  
23 A: You keep good notes.  
24 Q: Is that correct?  
25 A: Yes, that's correct.

1 Q: That's --  
2 A: Okay. I just wanted -- I wanted to be sure  
3 that you were talking -- you talked about  
4 advertising with Maverick and now promotion  
5 on Old Gold.  
6 Old Gold's promotion plan is strictly a  
7 savings program that offers discount smokers  
8 a further discount on the pack and the carton  
9 at retail.  
10 Q: Is that plan available in the state of  
11 California?  
12 A: I believe it is not.  
13 Q: With regard to your statement you believe it  
14 is not and your previous answers, I'm  
15 assuming that you're the person most  
16 knowledgeable about whether it is or is not  
17 available, is that correct?  
18 A: I would know if it was or not.  
19 Q: Have there been any significant changes in  
20 Lorillard's advertising or other promotion of  
21 its products in the state of California  
22 within the last five years that have come  
23 about as a result of any laws or initiatives  
24 or ordinances passed by the people of the  
25 state of California?

1 A: I would say, yes, there has been; and I  
2 would say that because of the list that I  
3 reviewed -- that I couldn't speak back to  
4 you in detail on, but the list by county of  
5 all the different rules as they apply to  
6 placement of advertising and placement of  
7 displays and point-of-sale. Most of that of  
8 which has come about in the last five years,  
9 so it's an ongoing process for us.  
10 Q: How are you kept apprised of new developments,  
11 emerging new laws in the state of California  
12 so that you can comply with them in terms of  
13 Lorillard's advertising and marketing efforts?  
14 A: Well, a couple different ways. For one, our  
15 lawyers are up on, you know, what's changing  
16 in the marketplace and how it affects the  
17 way we merchandise and market our brands. Of  
18 course, field sales representatives that work  
19 in the marketplace every single day are  
20 typically the ones that know first about  
21 things, and that's reported up to the  
22 division manager. And we read the newspaper.  
23 Q: Is it part of a field sales representative's  
24 job to make sure that retailers who sell  
25 Lorillard's products are in compliance with

1 local ordinances and other regulations  
2 applicable to the sale of those products?  
3 A: I would say no, it is not their job. It's  
4 the retailers' job to know if they're in  
5 compliance. It's our job to comply with the  
6 retailer.  
7 MR. CRAMPTON: That questioned  
8 involved the sale of cigarettes to the  
9 consumers?  
10 MR. GORE: Yes, yes.  
11 Q: What I'm getting at is, if a Lorillard sales  
12 rep observes a retailer engaging in some  
13 improper sales practice, is there anything in  
14 the job description or employment manual or  
15 other materials provided to that sales rep  
16 by Lorillard that says, "You should let the  
17 company know if you see anything like this  
18 going on"?  
19 A: If anything like that affects the legal sale  
20 and merchandising and promotion of  
21 Lorillard's products, it is their  
22 responsibility to make someone aware of it.  
23 Q: If it affects the legal sale of their  
24 products? I'm not sure I follow.  
25 A: Well, what you're assuming is that there's

1 some type of ordinance or law in place that  
2 tells a retailer that they need to do things  
3 a certain way in order to sell tobacco  
4 products legally.

5 Q: Right.

6 A: Okay. So that's what I mean by that.

7 MR. CRAMPTON: Also assuming that  
8 the sales rep knows those laws as well.

9 MR. GORE: Yes.

10 Q: This assumes that -- my hypothetical assumes  
11 that the sales rep is familiar with the local  
12 laws. He sees a retailer or someone  
13 distributing samples of Lorillard product in  
14 some way that is improper according to local  
15 law. Is it part of their job to come back  
16 to their division or regional manager and let  
17 them know, "This is going on out there. You  
18 ought to know about it. We need to put a  
19 stop to it," that sort of thing?

20 A: It is their --

21 MR. CRAMPTON: Hold on. Let me  
22 state an objection. Among all those  
23 assumptions were some things that were  
24 contrary to the testimony that's  
25 already been made. In particular, the

1 doesn't comply with our merchandising  
2 agreement with them, then they are --  
3 there's an issue there. We deal directly  
4 with the retailer on that.

5 Q: You say "there's an issue there." Can you  
6 tell me more -- what do you mean by "there's  
7 an issue there"?

8 A: If the display that we place in that store  
9 we agreed with the retailer to place in a  
10 certain location, when we came back in and  
11 it was placed on the back floor or under the  
12 counter, there would be an issue with that  
13 particular part of our merchandising  
14 agreement.

15 Q: Does Lorillard have standards or rules that  
16 apply to retailers who sell its products that  
17 are designed to prevent the sale of  
18 Lorillard's products to underage smokers?

19 A: In a whole variety of locations we have what  
20 you call non-self-service displays. I know  
21 in the state of Massachusetts it's all  
22 non-self-service. In certain areas, the  
23 retailer chooses to have that display as  
24 non-self-service; and if that's the case, we  
25 comply with that.

1 -- what Mr. Lindsley testified is that  
2 the sales reps know the laws that apply  
3 to Lorillard in its point-of-sale  
4 advertising or its sale to retailers or  
5 distributors. He did not testify they  
6 know the -- all the laws that would  
7 apply to the retailers.

8 MR. GORE: Okay.

9 MR. CRAMPTON: So your question  
10 assumed that and, you know, therefore  
11 that's the objection.

12 MR. GORE: Okay. That's a good  
13 point.

14 Q: (By Mr. Gore) With respect to -- well,  
15 strike that.

16 Does Lorillard have certain guidelines  
17 or rules that it provides to retailers and  
18 other people who sell its products to the  
19 general public about how they should be  
20 displayed and sold?

21 MR. CRAMPTON: That question  
22 applied to Lorillard itself?

23 MR. GORE: Yes.

24 A: In context with our merchandising agreements  
25 with the retailer, yes. If the retailer

1 Q: When you say you comply with that, is  
2 Lorillard's rules applicable to retailers who  
3 sell its products driven entirely by local  
4 ordinance or statute or is there something  
5 more than that? Is there -- are there rules  
6 that Lorillard develops internally,  
7 independent of what the locality's rules may  
8 be, that would apply to its retailers?

9 A: Only in regard to our merchandising  
10 agreements because they clearly specify, you  
11 know, how to qualify; and then there is some  
12 specifics in there, depending on the plan,  
13 in terms of where a certain display can and  
14 cannot be placed for the amount of money  
15 that we're willing to pay on a monthly basis.  
16 And if the retailer is not in compliance with  
17 those, then they're non-compliant and there  
18 is an issue there with them as far as payment.

19 Q: I assume that this applies to California as  
20 well as every other state in which Lorillard  
21 does business?

22 A: These are national programs. They apply to  
23 everybody.

24 Q: So we've got, as I understand it, two sets  
25 of rules applicable to the sale and

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<p>1 distribution of Lorillard's products. There 2 are the merchandising programs which contain 3 rules that the retailers have to comply with. 4 Then we also have whatever state and local 5 ordinances, regulations that apply to the 6 sale of tobacco products that Lorillard also 7 has to comply with. Are there any other 8 sources of rules or regulations that you are 9 aware of that govern the sale of your 10 products? 11 MR. CRAMPTON: Object to the 12 question to the extent that you said 13 that there is an -- that there are 14 rules that apply to Lorillard for the 15 sale of cigarettes to consumers or that 16 there -- or to the extent you said that 17 there are rules that Lorillard imposes 18 on retailers as to the sale to the 19 consumer. Those are all governed by 20 local or state law, and there was no 21 testimony that -- to the contrary on 22 that. 23 Q: What I'm -- maybe I can clarify it. We've 24 got the current merchandising program; and 25 this contains certain requirements imposed</p>	<p>1 campaigns are directed to smokers in general; 2 and those smokers are defined based on 3 demographics, male and female smokers, you 4 know, 21 years of age and older equally. 5 And like Newport, our advertising campaign 6 addresses male and female smokers 21 years 7 of age and older. 8 And there is a general market 9 execution, meaning there are white smokers in 10 one ad. There are black smokers in another, 11 and there are Hispanic smokers in another. 12 And sometimes they're all together in one ad. 13 So not to one specifically versus the other 14 but in totality, all of them. 15 Q: Having black smokers in one ad, white 16 smokers in another ad, Hispanic smokers in 17 another ad, is that just random or is that 18 intended to promote Lorillard products to 19 specific groups of people? 20 A: What do you mean by "random"? 21 Q: Just happenstance, that you just happen to 22 wind up with a black person or a white 23 person or a Hispanic person in any particular 24 ad. 25 A: No, it's based on the knowledge that all</p>
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<p>1 upon retailers who want to sell Lorillard's 2 products, is that correct? 3 A: Yes, that's correct. 4 Q: Then each state and each county and each 5 city or other political subdivision may have 6 certain rules that apply to the sale and 7 distribution of tobacco products, is that 8 correct? 9 A: That's correct. 10 Q: Are there any other sources of rules or 11 regulations that you are aware of, other 12 than the two I've just mentioned, that apply 13 to the sale or distribution of tobacco 14 products? 15 A: Not that I'm aware of. 16 Q: Are you involved in the formulation of 17 advertising or marketing campaigns that are 18 directed to specific demographic elements? 19 MR. CRAMPTON: Objection. 20 Assumes that such marketing campaigns 21 exist. 22 MR. GORE: Good point. 23 Q: Are there any, to your knowledge, at 24 Lorillard? 25 A: Well, I hesitated for a second because our</p>	<p>1 different kinds of people among all different 2 ethnicities smoke menthol cigarettes. 3 Q: Does Lorillard have a brand, for example, a 4 brand like Virginia Slims, that is targeted 5 toward women? 6 A: We did, but we don't any longer. 7 Q: What was that brand? 8 A: That brand was called Style. 9 Q: When was Style discontinued? 10 A: It was discontinued at the end of 1997. 11 Q: I'm sorry, 1990? 12 A: 1997. 13 Q: Why was it discontinued? 14 A: We couldn't make a go of it. It wasn't 15 building enough business, and we were 16 investing too much money against it, and the 17 dollars were taken to support other volume 18 opportunities. 19 Q: Does Lorillard have a brand that is targeted 20 toward black people? 21 A: Lorillard does not have a brand like that, no. 22 Q: Does it have a brand that is targeted toward 23 Hispanic people? 24 A: It does not have a brand targeted to Hispanic 25 people.</p>

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<p>1 Q: Does it have a brand that is targeted toward 2 Asian smokers? 3 A: It does not. 4 Q: Does it have a brand that is targeted toward 5 any minority? 6 A: Exclusively, no, it does not. 7 MR. CRAMPTON: I object to this 8 line of questioning. I'm looking at 9 the Arch deposition here. These 10 questions -- this series of questions 11 is covered on pages 193 to 196 of the 12 Arch deposition. 13 Q: Does Lorillard study or review its 14 competitors' ad campaigns? 15 A: On an occasion, yes. 16 Q: When you say "on an occasion," do you mean 17 on an irregular basis? 18 A: Yes, on an irregular basis. 19 Q: Is this done once a year or less or more? 20 A: Well, it also goes back to the market research 21 strategy for each individual brand. There 22 might be a strategy to get feedback on your 23 campaign for a particular brand against a 24 bunch of competitive brands, and therefore a 25 study would be executed to get feedback.</p>	<p>1 A: The switching study was conducted probably 2 through the -- I'm going to say late 1980s. 3 I don't recall anything really after that. 4 MR. CRAMPTON: I'm going to raise 5 another objection. It looks like pages 6 109, 110, 111 of the Arch deposition 7 cover the switching study. 8 MR. GORE: Okay. I guess I 9 should preface each and every question 10 with the words "in California" because 11 that's what I'm looking for. 12 MR. CRAMPTON: The switching study, 13 though, was not something that prefaced 14 the question by saying in California. 15 It wasn't done in California. 16 MR. GORE: True. I just -- I'm 17 -- keep in mind that what I'm asking 18 about is what's been done or is being 19 done in California; and if it turns out 20 that something is done on a national 21 basis rather than state or regional 22 basis, but it applies to California, 23 I'd like to know about that. But I 24 appreciate your letting me know that 25 that <u>has</u> been covered.</p>
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<p>1 But if you mean in totality for all our 2 brands on an ongoing basis or even on an 3 irregular basis, the answer would be no. 4 Q: Has Lorillard conducted studies on brand 5 loyalty? 6 A: I'm going to say that years ago part of a 7 study called a switching study, which gave us 8 insight into demographics for all brands, 9 meaning Lorillard's brands and competitive 10 brands, that part of that reported the 11 loyalty factor; and that was determined based 12 on how often a smoker switches from one 13 brand to the other. 14 Q: Did you participate in that study? 15 A: I was a recipient of that information years 16 ago. 17 Q: Can you recall anything about its conclusions 18 as far as how often a smoker switches from 19 one brand to another? 20 A: All I can remember for you is that over time 21 the loyalty factor was starting to wane, and 22 I believe that was at the time due to the 23 growth of discount brands in the marketplace. 24 Q: Can you recall what year the switching study 25 was conducted?</p>	<p>1 A: I do also want to make it clear that unless 2 I stated specifically it was done in the 3 state of California, that everything I'm 4 referring to really is a national program. 5 I'll specify if it's not. 6 Q: Okay. Thank you. 7 You testified that the switching study 8 ended sometime around the end of the 1980s. 9 Do you know about when it began? 10 MR. CRAMPTON: I just want to 11 raise the same objection. This was 12 already covered. 13 A: I believe it's been around for as long as 14 I've been around, up to the late 1980s, 15 because I started in 1981. 16 Q: Switching gears, can you describe for me 17 generally what Lorillard has done during the 18 1990s in California to reduce the sale of 19 cigarettes to minors? 20 MR. CRAMPTON: Objection. That 21 was covered yesterday. I guess to the 22 extent there might be something 23 different in California than anywhere 24 else, I don't object; but this subject 25 already was covered in yesterday's</p>

1 deposition.  
 2 MR. GORE: I understand that.  
 3 Q: What I'm looking for is anything different  
 4 from or in addition to what you testified  
 5 about yesterday the company did or did not  
 6 do in the state of Massachusetts, which is  
 7 why I said "in California."  
 8 A: My testimony yesterday as it applies to the  
 9 state of Massachusetts that applied to what  
 10 we do on a national basis would also impact  
 11 what we do in the state of California.  
 12 MR. GORE: Can we go off the  
 13 record for just a moment?  
 14 MR. CRAMPTON: Sure.  
 15 VIDEOGRAPHER: Off the record at  
 16 1:23.  
 17 [DISCUSSION HELD OFF THE RECORD]  
 18 VIDEOGRAPHER: This is the  
 19 beginning of tape three of the  
 20 deposition of Victor D. Lindsley.  
 21 We're on the record at 1:27.  
 22 Q: I'm not sure I got -- we got a clear answer  
 23 on the record to the last question, which  
 24 was describe what Lorillard has done during  
 25 the 1990s in California to reduce the sale

1 of cigarettes to minors.  
 2 A: The same thing that we discussed yesterday as  
 3 addresses this issue in the state of  
 4 Massachusetts was -- is what we do on a  
 5 national basis, and it would also impact  
 6 exactly what we do in the state of  
 7 California.  
 8 Q: Same question for the 1980s.  
 9 A: The question would -- the answer would be  
 10 exactly the same.  
 11 Q: What about the 1970s?  
 12 A: The answer would be the same.  
 13 Q: 1960s?  
 14 A: I don't know if there's anything different  
 15 about the 1960s, but I will make the  
 16 assumption that -- it's fair to make the  
 17 assumption on my part that the advertising  
 18 code which I believe is still in -- was in  
 19 place at that time was strictly adhered to.  
 20 And any state laws that existed as far  
 21 as minimum smoking age was adhered to, and  
 22 of course any type of ordinances that might  
 23 be specific to a state or to a county were  
 24 also in place at the time and we also  
 25 strictly adhered to those, as well as I

1 believe that the "It's the Law" program or  
 2 something like that through The TI was also  
 3 in place; and of course, we support that as  
 4 well.  
 5 Q: What was the first year of the "It's the  
 6 Law" program under TI?  
 7 A: I honestly don't know when that started.  
 8 Q: What was the first year of the advertising  
 9 code?  
 10 A: I honestly don't know either when the first  
 11 year of that is. That's why I was uncertain  
 12 about the 1960s.  
 13 Q: Can you please describe activities undertaken  
 14 by Lorillard in California to ensure that its  
 15 marketing and advertising do not appeal to  
 16 minors?  
 17 A: All of those things would be addressed also  
 18 within context of Lorillard's advertising  
 19 code -- or the industry's advertising code in  
 20 terms of how we advertise our cigarettes,  
 21 what kind of models that we use. There is  
 22 specification that a model cannot be under  
 23 the age of 25. We proof for that as well as  
 24 if they appear like they are under the age  
 25 of 25, proof means nothing. If they look

1 like they're younger, we don't use them.  
 2 The sampling laws that we have here in  
 3 our advertising code in terms of how we go  
 4 about sampling and proofing for samples  
 5 before we hand them out we continue to abide  
 6 by. Basically all the issues within the  
 7 advertising code as far as placement of  
 8 outdoor advertising as we've already talked  
 9 about, in this particular case, the  
 10 1,000-foot rule. Everything applies to the  
 11 development of our marketing plans in general.  
 12 In terms of promotion, our attempt is  
 13 to develop programs that we feel will reach  
 14 smokers 21 years of age and older, and also  
 15 the use of print advertising vehicles that we  
 16 believe are targeted primarily to anyone 18  
 17 years of age and older.  
 18 Q: I'm sorry, I lost the last part of your  
 19 testimony there. The difference between 21  
 20 and 18? I didn't follow you there.  
 21 A: Our promotional code reads that our  
 22 promotions would be developed to appeal to  
 23 smokers 21 years of age and older.  
 24 Q: Okay.  
 25 A: In terms of selecting advertising vehicles,

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<p>1 like print vehicles, the rule is 18 years of 2 age and older. 3 Q: Why do you have different ages for promotion 4 and advertising? 5 A: Well, the assumption is that if you reach out 6 to someone 21 years of age and you get, you 7 know, 18-, 19-, 20-year-old smokers 8 participating, that that's fair. If you try 9 to aim at the age of 18 when it comes to 10 promotion, you run the risk of also appealing 11 to people under the age of 18, which is not 12 our attempt. So all it is is kind of a 13 grace age in, you know, those three years to 14 give us some flexibility so we don't, you 15 know, attract anyone under age. 16 Q: Do you know what the legal age is for 17 purchasing tobacco products in California? 18 A: I'm going to say it's 18 years of age. 19 Q: The advertising code you testified about, is 20 that specific to Lorillard or industry wide? 21 A: I believe it's industry wide. 22 Q: Do you know who wrote the advertising code? 23 A: Actually, I do not know exactly who wrote it. 24 Q: You mentioned -- or I think you mentioned a 25 promotional code, is that -- did I hear you</p>	<p>1 state of California is governed by the 2 advertising code? 3 A: Yes, it's fair to say that, which, by the 4 way, looks like it was originated in 1964. 5 So the middle part of the 1960s. 6 Q: You had testified earlier about requirements 7 imposed upon retailers who sell Lorillard 8 products and that if they don't follow those 9 rules or meet those requirements, that an 10 issue arises. Can you recall a specific 11 instance of any such issue arising within the 12 state of California? 13 A: No, I cannot recall it. 14 Q: What would happen to a retailer, 15 hypothetically speaking, if one of these 16 issues arose? How is the issue resolved? 17 A: Either they are warned to abide by their 18 agreement with us, or in other cases our 19 agreement would be terminated instantly on 20 the spot. 21 Q: Who has the authority to issue such a warning? 22 A: Well, the authority would come from a 23 combination of the regional sales manager and 24 the division manager in that particular area. 25 It would be identified by the sales rep, and</p>
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<p>1 correctly? 2 A: I'm not sure if you did. I didn't say -- I 3 don't know what a promotional code is. 4 Q: To your knowledge, there's no such thing as a 5 promotional code? 6 A: Only as it -- only as it impacts the 7 development of promotional programs. I might 8 have said it in context with the 21 years of 9 age and older rule that we enforce. 10 Q: Is this promotional code -- is it -- by 11 promotional code, do you simply mean the 12 application of the rules of the advertising 13 code to the development of a promotion at 14 Lorillard? Is that what you're referring? 15 A: That's fair, and that is in the advertising 16 code. 17 Q: There's not a document somewhere separate 18 from the advertising code entitled 19 "Promotional Code"? 20 A: No, I misused -- when I used the word 21 "code," I misused it. It's the advertising 22 portion of the advertising marketing code 23 that I'm referring to. 24 Q: Is it fair to say that all of the advertising 25 and marketing that Lorillard does in the</p>	<p>1 it would -- I guess the final decision and 2 removal of displays and et cetera would come 3 from the regional or the divisional manager. 4 Q: Who is the individual who would have the 5 authority to terminate the agreement on the 6 spot? 7 A: Well, I would assume that the sales rep would 8 pick up the phone and call the division 9 manager, and there would be evidence strong 10 enough to say, "Pick up the display and walk 11 out." 12 Q: Are you aware of any complaints that 13 Lorillard has received in the state of 14 California concerning noncompliance with the 15 cigarette advertising code? 16 A: I am not aware of any. 17 Q: Is there someone other than yourself who 18 would be more knowledgeable about such 19 complaints? 20 A: When it comes to the advertising code? No. 21 If it existed, I would know about. 22 Q: This is for the state of California? 23 A: Yes. 24 Q: Has Lorillard ever conducted any studies or 25 analyses of the effectiveness of its efforts</p>

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1 to prevent the use of tobacco products by  
2 minors in California?  
3 A: Are you asking whether or not Lorillard has  
4 done research against underage smokers?  
5 Q: Research regarding whether its efforts to  
6 prevent the sales of tobacco products or its  
7 products to underage smokers in California,  
8 whether or not they've been effective.  
9 A: Well, that would assume that we researched  
10 underage smokers; and the answer would be  
11 no, we haven't.  
12 Q: It's your testimony that you've never  
13 conducted any research of any kind regarding  
14 underage smokers in the state of California?  
15 A: That's true.  
16 Q: By underage, are we now talking under 21 or  
17 under 18?  
18 A: Under whatever the legal age to purchase  
19 cigarettes are in the state of California.  
20 Q: Could you describe any activities or program  
21 that Lorillard has taken in California in the  
22 1990s to reduce the consumption of cigarettes  
23 by adults?  
24 A: No, we believe that adults have the right to  
25 choose to smoke or not to smoke.

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1 Q: So there have been no efforts by Lorillard  
2 during the 1990s in California to reduce the  
3 consumption of cigarettes by adults?  
4 A: No, there has not been. We wouldn't be in  
5 business if we did.  
6 Q: Same question for the 1980s.  
7 A: Same answer.  
8 Q: Same question for the 1970s.  
9 A: Same answer.  
10 Q: Other than compliance with state and local  
11 statutes and ordinances in California and  
12 adherence to the cigarette advertising code,  
13 are there any other steps or efforts that  
14 Lorillard has taken to reduce youth smoking  
15 in California?  
16 A: Other than the fact that every piece of  
17 advertising and every package of cigarettes  
18 we manufacture clearly has warnings on it  
19 that point out the risks -- the potential  
20 risks of smoking.  
21 Q: Anything else?  
22 A: Not that I can think of.  
23 Q: Has Lorillard's approach or procedures to the  
24 issue of underage smoking changed during the  
25 time that you've been with the company?

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1 A: Changed?  
2 MR. CRAMPTON: Actually, my  
3 objection would be reports and  
4 procedures being vague, undefined.  
5 A: Well, the advertising code that's been around  
6 since 1964, you know, clearly specifics all  
7 of the issues we already talked about in  
8 terms of smoking being for adults. We  
9 believe it's an adult custom and we support,  
10 you know, the smoking age limit by state.  
11 That has not changed, so we continue to  
12 abide by the same advertising and marketing  
13 code as we had from 1964 with some  
14 modification. I realize that it's been  
15 improved over time.  
16 Q: To your knowledge, has the advertising code  
17 been changed since 1964?  
18 A: I believe that there was an update of that  
19 in the early 1980s and maybe one in the  
20 mid-1980s as well.  
21 Q: Do you know who approved or drafted the  
22 updates?  
23 A: I do not know.  
24 Q: You didn't participate?  
25 A: I did not.

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1 Q: What is Lorillard's marketing policy with  
2 respect to advertising that depicts people  
3 engaged in athletic activities?  
4 A: It is appropriate to show people engaged in  
5 what were considered to be normal  
6 recreational activities.  
7 MR. CRAMPTON: This is in the  
8 Minnesota deposition.  
9 MR. GORE: Okay.  
10 Q: What's the difference between normal  
11 recreational activities and athletic  
12 activities, or is there any difference?  
13 A: Sure there's a difference. I mean any type  
14 of sporting activity that clearly looks as  
15 if it requires stamina or competition in  
16 order to win would consider to be types of  
17 athletic activity that would be inappropriate  
18 for us versus a bunch of people hanging out  
19 on the beach throwing around a football or  
20 people, you know, playing a tug of war,  
21 whatever it might be we'd consider to be  
22 normal recreational activity and perfectly  
23 acceptable for us to depict.  
24 Q: Is this spelled out in the cigarette  
25 advertising code?

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<p>1 A: Yes, it is.</p> <p>2 Q: Other than billboards, what forms of outdoor advertising has Lorillard employed in California in the 1990s?</p> <p>3 A: Other forms of outdoor advertising?</p> <p>4 Q: Yes.</p> <p>5 A: Other than billboards?</p> <p>6 Q: Other than billboards.</p> <p>7 A: Billboards being defined as an eight-sheet or a 30-sheet or the bigger units? How are you defining billboards?</p> <p>8 Q: I'm going to -- your expertise is ahead of me there. Billboards to me is large stationary signs. I don't mean by that any particular size.</p> <p>9 A: Okay.</p> <p>10 Q: So if your answer could include -- what I mean by billboard is the size of sign that you see when you're driving along a freeway or interstate highway.</p> <p>11 A: Okay. I'll say that we have used and do use eight-sheet billboards, 30-sheet billboards and the larger variety of billboards in the state of California.</p> <p>12 Q: Are there other forms of outdoor advertising</p>	<p>1 along interstate highways, is that an</p> <p>2 eight-sheet or 30-sheet or some other size?</p> <p>3 A: It could be -- it wouldn't be eight sheets.</p> <p>4 It would be either a 30-sheet or something bigger than that.</p> <p>5 Q: What forms of outdoor advertising other than billboards did Lorillard use in the state of California during the 1980s?</p> <p>6 A: You're looking beyond outdoor advertising? Like for example --</p> <p>7 Q: Beyond billboards.</p> <p>8 A: Beyond billboards. Okay. I think that we've already pointed out that in the realm of outdoor advertising there are billboards and there are transit, correct?</p> <p>9 Q: Yes.</p> <p>10 A: Okay. I believe in the 1980s that also we've used a combination in northern California, specifically in San Francisco, billboards, a variety of sizes, as well as the transit system there. Now, I know the BART system isn't that old; but I think it was there in the 1980s.</p> <p>11 Q: It was.</p> <p>12 A: In Los Angeles we would have only used</p>
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<p>1 besides the eight and 30-sheet billboards</p> <p>2 that you've used in California during the 1990s?</p> <p>3 A: The only other form of outdoor advertising would fall into the area of transit, and I believe in San Francisco we've used the BART system. Is that right? Does it still exist?</p> <p>4 And I don't believe that we've used any form of transit advertising in Los Angeles since I don't believe there is any transit in Los Angeles. Public transportation, that is.</p> <p>5 Q: Having lived in both cities, I can tell you there's precious little in Los Angeles.</p> <p>6 BART is the -- is a rail system that runs between San Francisco and adjoining counties, and then you may be -- I don't know if you're referring also to the municipal bus system in San Francisco or Los Angeles perhaps?</p> <p>7 A: Definitely not in Los Angeles. I'm not sure if we've used that in San Francisco or not, but I know that we did -- I don't believe we still do -- used the BART system for advertisements within the BART system.</p> <p>8 Q: The size of billboards that are displayed</p>	<p>1 billboards and no transit.</p> <p>2 Q: Same question for the 1970s.</p> <p>3 A: It would be billboard advertising only, as I recall, and no form of transit.</p> <p>4 Q: Does Lorillard have any sort of policies, written or unwritten, regarding outdoor advertising other than what is expressed in the cigarette advertising code?</p> <p>5 A: Only policies connected with the contracts that our vendors sign when we go into a contract agreement with them on purchase of outdoor in a particular market. The details involved in that contract I don't know about.</p> <p>6 Q: Who would know about that?</p> <p>7 A: Pat Nichalsaisen, the director of Media Services, would know that.</p> <p>8 Q: Can you describe generally the duties and responsibilities of the Media Services Department?</p> <p>9 A: The duties and responsibilities of the Media Service Department really is to service the brand marketing group specifically in regard to the execution of the brands' media plans. They will also provide some strategic input into what forms of media would be most</p>

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1 appropriate for certain brands based on a  
2 very thorough analysis and review of the  
3 brands' marketing strategies for each  
4 individual brand.  
5 Q: The name of Pat Nichalsaisen's department is  
6 the Media Services Department?  
7 A: It's the Media Department.  
8 Q: Are there any other departments at Lorillard  
9 that are responsible for outdoor advertising?  
10 A: No, there are not.  
11 Q: Do you know what portion of Lorillard's 1997  
12 advertising budget was allocated to outdoor  
13 advertising?  
14 A: In the state of California?  
15 Q: Yes.  
16 A: No, I don't know that.  
17 Q: Who would know that?  
18 A: Well, I would know that if I ran the report  
19 on it; but remember, we made it -- earlier  
20 testimony stated that Lorillard does not keep  
21 dollars on a state-by-state basis, only on a  
22 division basis. So I could go to my computer  
23 or have someone else in my group go to their  
24 computer and run those numbers probably for  
25 at least 1998, and I'm not sure if it's on

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1 the system for 1997 at this point or not.  
2 Q: Does Lorillard have a policy regarding  
3 retention of sales and expense information  
4 for a certain period of time?  
5 A: Yes, it does. And most of those  
6 expenditures are reported to the FTC in  
7 total; but remember, once again, we don't  
8 run information on a state-by-state basis. I  
9 mean there might be a couple reports --  
10 special reports that I think you will  
11 eventually see, but that is not information  
12 that we normally generated.  
13 Q: Who is the person who decides which Lorillard  
14 brands will be selected for outdoor  
15 advertising in California?  
16 MR. CRAMPTON: Objection to the  
17 extent that it assumes that there is  
18 one person who makes all those  
19 decisions.  
20 A: In general, like everything else -- we  
21 pointed this out already before with other  
22 questions -- that the brand team recommends  
23 all forms of advertising and promotion, all  
24 the different tools that we would use to  
25 address the brand's marketing objective on a

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1 national basis and also on a tier basis or a  
2 geographic basis, if that's the way the brand  
3 writes its marketing program.  
4 The final agreement to run anything,  
5 whether it's advertising or promotion, is by  
6 the president of the company. He has final  
7 say in the brand's marketing plan, and  
8 that's a national -- on a national basis.  
9 If part of that marketing plan is a specific  
10 showing level or advertisement or promotion  
11 for California, typically he doesn't get into  
12 that level of detail. He looks at it in  
13 totality.  
14 Q: At what level of Lorillard's organization do  
15 you have a person or persons who actually  
16 reviews the placement and content of  
17 individual billboards in the state of  
18 California?  
19 A: Well, let's first deal with the term  
20 "content." Content is national. The content  
21 in California is no different than the  
22 content in Florida. The types of media  
23 placed, meaning whether it's a big billboard  
24 or a small billboard, is based on  
25 availability. So that could vary.

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1 Promotions are also the same. It's  
2 going to be against the promotional strategy;  
3 and if it falls in a certain tier, it's  
4 going to get, just like every other division  
5 in that tier, a certain level of promotional  
6 support. I am the one that would look at  
7 all levels of detail as it relates to the  
8 marketing plan prior to taking it up to the  
9 president of the company.  
10 Execution is a different story. You  
11 said execution. I pointed out earlier as  
12 well that execution is through Lorillard  
13 media in the area of media placement; and we  
14 talked about how we evaluate outdoor  
15 advertising either with someone at Lorillard,  
16 Terry Shanahan, or Kelly Services or the  
17 outdoor company that we contract the space  
18 from.  
19 Print advertising is typically through  
20 proofs that the magazine will send to us  
21 showing us how the ad ran, and forms of  
22 promotion basically come through the  
23 promotion group in terms of execution. And  
24 our field representatives are the people that  
25 actually execute any type of retail promotion

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<p>1 program.</p> <p>2 Q: Other than the advertising code, is there any</p> <p>3 consideration given by Lorillard to the</p> <p>4 placement or content of its outdoor</p> <p>5 advertising in California?</p> <p>6 MR. CRAMPTON: Other than the</p> <p>7 advertising code and any other</p> <p>8 regulations, restrictions --</p> <p>9 MR. GORE: Yes.</p> <p>10 MR. CRAMPTON: -- previously</p> <p>11 testified to?</p> <p>12 MR. GORE: Yes.</p> <p>13 A: Yes, and it again goes back to the specific</p> <p>14 marketing plan for the brand. Newport's</p> <p>15 marketing plan calls for the placement of</p> <p>16 billboards in the general market in the --</p> <p>17 and in the urban center, basically all around</p> <p>18 the market and all parts of the market</p> <p>19 because all parts of the market have either</p> <p>20 Newport smokers or competitive menthol</p> <p>21 smokers that we surely would like to switch.</p> <p>22 As far as content, again the content</p> <p>23 is, you know, a national content. It doesn't</p> <p>24 vary on a state-by-state basis.</p> <p>25 Q: Has Lorillard undertaken any studies</p>	<p>1 months, what changes every three months and</p> <p>2 what changes every six months?</p> <p>3 A: It's based on the expense. The larger units</p> <p>4 are a lot more expensive to produce; and</p> <p>5 therefore, we don't want to produce them as</p> <p>6 often as the smaller ones that involve paper</p> <p>7 versus maybe material like vinyl. That's</p> <p>8 far more costly. We can afford to change</p> <p>9 content on a more regular basis.</p> <p>10 Q: Are there any activities that Lorillard has</p> <p>11 undertaken via outdoor advertising in</p> <p>12 California to educate the public with regard</p> <p>13 to any health risks associated with smoking?</p> <p>14 A: Yes.</p> <p>15 Q: What are those?</p> <p>16 A: Every billboard and every magazine that you</p> <p>17 see clearly has a warning that is dictated by</p> <p>18 size, a certain amount of the space of the</p> <p>19 board, that should clearly tell every</p> <p>20 consumer the potential warnings associated</p> <p>21 with smoking cigarette. And, as you know,</p> <p>22 there are a series of warnings that are</p> <p>23 rotated on a quarterly basis by brands. So</p> <p>24 the consumer gets to see fairly all the</p> <p>25 different warnings associated with smoking.</p>
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<p>1 regarding the effectiveness of its outdoor</p> <p>2 advertising in California?</p> <p>3 A: No, it has not.</p> <p>4 Q: Not ever?</p> <p>5 A: Not that I recall.</p> <p>6 Q: How often is consideration given to changing a</p> <p>7 billboard or other outdoor advertising by</p> <p>8 Lorillard in California?</p> <p>9 A: That would depend on the brand, and like</p> <p>10 other areas of the country -- I'll give you</p> <p>11 an example. Newport's outdoor advertising</p> <p>12 program, changes creative every two months in</p> <p>13 some forms and on a quarterly basis in other</p> <p>14 forms and up to on a six-month rotation in</p> <p>15 some of the other forms, if you will.</p> <p>16 Q: You said changes creative. I'm not sure I</p> <p>17 follow you.</p> <p>18 A: You were talking about content.</p> <p>19 Q: Yes.</p> <p>20 A: Okay. When I say creative, I mean content.</p> <p>21 The content of what a consumer will</p> <p>22 physically see in an outdoor billboard</p> <p>23 changes either every two months, every three</p> <p>24 months or every six months.</p> <p>25 Q: How do you decide what changes every two</p>	<p>1 Q: Those warnings are written by whom?</p> <p>2 A: I don't know exactly who wrote them, but</p> <p>3 they've been around for 25 years.</p> <p>4 Q: Well, who does Lorillard get them from? How</p> <p>5 do you know when to rotate the warnings and</p> <p>6 what the warnings are supposed to say?</p> <p>7 A: There is, within our marketing manual, a</p> <p>8 schedule that I assume was laid forth by the</p> <p>9 FTC that clearly puts all brands into a</p> <p>10 certain rotation category and has clearly</p> <p>11 specified what the size of the warning</p> <p>12 should be for different size billboards or</p> <p>13 different size advertisements, print if you</p> <p>14 will and point of sale, and also specifies</p> <p>15 very clearly what the size requirement is for</p> <p>16 reporting tar and nicotine levels on all</p> <p>17 forms of advertising.</p> <p>18 Q: Who at Lorillard is responsible -- strike</p> <p>19 that.</p> <p>20 Who at Lorillard is responsible for</p> <p>21 magazine or other print advertising</p> <p>22 distributed in the state of California?</p> <p>23 A: What do you mean by "other"?</p> <p>24 Q: Magazines. By other print I mean the</p> <p>25 newspapers, other periodicals, those sorts of</p>

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1 things.  
2 A: Can you ask that question once again, please?  
3 Q: Sure. Who at Lorillard or what department is  
4 responsible for magazine or periodical  
5 advertising of Lorillard's products in  
6 publications that are going to be distributed  
7 in the state of California?  
8 A: The responsibility is brand marketing.  
9 Q: Same as it was in Massachusetts yesterday?  
10 A: Yes, sir.  
11 Q: Is there anything different about the way  
12 Lorillard advertises in magazines and  
13 periodicals distributed in California than in  
14 the way it advertises in magazines and  
15 periodicals distributed in Massachusetts?  
16 A: No, there isn't. And keep in mind that  
17 Newport's print plan, if you will, magazines  
18 and periodicals, are a national plan. So  
19 what magazine appears in Massachusetts with a  
20 Newport ad would be exactly the same  
21 magazine and exactly the same time that it  
22 would appear with the same content in the  
23 state of California, and that's true of all  
24 of our -- all of the books in our media  
25 schedule.

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1 Q: So does that mean that if you're going to  
2 run an ad in -- if Lorillard is going to run  
3 an ad for Newport in Sports Illustrated  
4 magazine, that you'll run it in a particular  
5 issue of Sports Illustrated and that ad will  
6 be distributed along with the magazine all  
7 over the country, same ad, same magazine, same  
8 distribution?  
9 A: Yes, sir.  
10 Q: Are you aware of any instances where  
11 Lorillard tells Sports Illustrated, "We want  
12 the Newport ad to run in the magazines  
13 distributed in our strong areas, the  
14 Northeast, but we don't want it to run in  
15 areas where we're weak," such as some other  
16 part of the country?  
17 A: Not currently. The way that type of thing  
18 might happen now is if there were a Newport  
19 line extension. Recently we extended Newport  
20 into the slim 120s category; and the area  
21 where slim 120s was being distributed, we  
22 would break into Newport's national magazine  
23 plan. And instead of a Newport ad, it would  
24 be a Newport Slim 120s ad. Okay. It would  
25 still be a national page. Only the creative

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1 that you might see might be a Newport ad,  
2 and the creative that you might see in  
3 Massachusetts might be one for Slim 120s.  
4 Q: Okay.  
5 A: But prior years we did have a regional  
6 magazine plan, and that was only because of  
7 the size of the brand. If the brand can't  
8 support a national media plan, meaning that  
9 there aren't -- there isn't distribution  
10 sufficient enough in certain areas or sales  
11 to support expenditures, you wouldn't buy the  
12 whole country. It wouldn't be very, very  
13 efficient. For Newport being as national as  
14 it is and as strong as it is, we can buy  
15 national media effectively.  
16 Q: You said in prior years you had a regional  
17 plan. Does that mean that you presently  
18 don't have regional plans for any of  
19 Lorillard's brands?  
20 A: Newport is the only brand that uses any form  
21 of print advertising and has for years, and  
22 only with the exception of a break-in of  
23 copy due to the introduction of something  
24 new for Newport in a specific geographic  
25 area, that would not be the case.

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1 Q: So the change from -- I'm trying to get at  
2 the distinction between what you did in prior  
3 years as opposed to what you do now. That  
4 change took place in what year?  
5 A: It has to be ten years ago.  
6 Q: That's when Newport went from being regionally  
7 advertised in print media to national  
8 advertising?  
9 A: Primarily, but there are a lot of different  
10 reasons for why that happened as well. But  
11 I think that's fair to say, that we went  
12 from a more regional plan where there had  
13 been some national weight, but not nearly to  
14 the extent we had regional weight, to a plan  
15 that now is all national with limited, if  
16 any, regional exercises.  
17 Q: You testified about something yesterday that  
18 Lorillard does not -- and correct me if I'm  
19 not correctly paraphrasing your testimony --  
20 Lorillard does not seek to advertise in  
21 publications that are primarily subscribed to  
22 or distributed to teenagers or people who are  
23 not of a legal age to purchase tobacco  
24 products. Is that a correct statement of  
25 your testimony?

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1 A: That's a correct -- that's correct.

2 Q: How do you determine the circulation or  
3 readership of a particular magazine such as  
4 the age of its readers such as Sports  
5 Illustrated?

6 A: We don't, I mean, only because we don't look  
7 at any type of data that would suggest what  
8 percent or the number of people reading a  
9 magazine would be under the age of 18.  
10 Because I guess if we did, I'd be sitting  
11 here today and you'd be asking me questions  
12 and throwing out documents asking me, "Well,  
13 you did research this group?" We don't  
14 research this group. We don't aim our  
15 advertising at this group.

16 So what we use is our best judgment in  
17 terms of the makeup of a magazine based on  
18 the fact that they report to us what their  
19 age demographic is from the age of 18 and up  
20 by male/female and by age as a guide in  
21 determining what types of magazines to use  
22 and not to use.

23 It's clear that when you get into a  
24 magazine like Seventeen, that clearly -- just  
25 based on what that represents, and there are

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1 many others like it, editorially are directed  
2 to people under the age of 18. That  
3 wouldn't even be a consideration obviously  
4 for us. So we don't research among 18 years  
5 of age and -- or under the age of 18 years  
6 of age, and we do use our best judgment in  
7 determining what magazines are most  
8 appropriate to advertise tobacco products.  
9 Q: When you say they report to you the  
10 demographics of their readership, male,  
11 female and 21 and up, they -- are you  
12 referring to the publishers of the magazines?  
13 A: Actually, the publishers of the magazines  
14 that are audited -- not ever single magazine  
15 belongs to an auditing service -- will  
16 provide -- much like the tobacco company  
17 provides sales information to MSA, they  
18 provide information on the demographics and  
19 the circulation of their magazines to a  
20 syndicated research company that compiles all  
21 this information and makes it available to  
22 advertisers.

23 Q: I know you told us the name of the  
24 syndicated research company yesterday, but I  
25 can't remember it.

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1 A: You know what? I don't think I did.

2 Q: Well, what is it?

3 A: I'm not sure that I know other than I know  
4 Nielsen is one kind of syndicated research  
5 company that reports circulation, but I'm not  
6 sure that's who we use. It could be  
7 Nielsen. It could be Starch. I mean, there  
8 are a whole bunch of them; but I don't know  
9 the primary one.

10 Q: How do you -- well, who at Lorillard is the  
11 person or the persons who evaluate this  
12 information that's received from the  
13 syndicated reporting service whose name we  
14 don't know and decides, "This magazine is  
15 okay and this one, too young. Don't want to  
16 advertise in this one"? Who makes those  
17 decisions?

18 A: Those decisions are not made, but those  
19 decisions are recommended -- or those things  
20 are recommended between our advertising  
21 agencies, which in this case is one  
22 advertising agency, and Lorillard Media  
23 Department together, after reviewing the  
24 media strategies for a specific brand, will  
25 develop an executional recommendation that

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1 would list those magazines that they think  
2 are most appropriate and the specifics of  
3 those magazines along with the cost of those  
4 magazines and make that presentation to brand  
5 marketing for approval.

6 Q: Does the final selection of the magazines  
7 have to be approved by the president of the  
8 company?

9 A: Yes, actually the president of the company is  
10 always very interested in knowing what  
11 magazines we're using.

12 Q: Did you say the presentation was made to the  
13 media services department?

14 A: I'm sorry, the?

15 Q: The recommendation or presentation by the  
16 advertising agency was made to which  
17 department at Lorillard?

18 A: Well, I think I said that the advertising  
19 agency in conjunction with the media  
20 department will develop the executional  
21 recommendation; and that recommendation is  
22 made directly to the brand group for review  
23 and approval.

24 Q: Is there a difference between the Media  
25 Department and the Media Services Department?

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1 A: No, there isn't. It's the same place.  
2 Q: Thank you. Is there any effort made to --  
3 strike that.  
4 How do you decide which magazines to  
5 advertise in or not to advertise in when it's  
6 a close call? What I'm getting at is, I  
7 mean how young is too young in terms of  
8 readership of a magazine? Obviously the  
9 example you raised, Seventeen, clearly  
10 inappropriate; and at the other end of the  
11 spectrum, I guess a senior citizens magazine  
12 wouldn't be perfectly appropriate. What do  
13 you do with a publication that's on the  
14 cusp, so to speak?  
15 MR. CRAMPTON: Objection, vague and  
16 ambiguous. Multiple questions in  
17 there. I assume the one you want  
18 answered is the last one, "What do you  
19 do with a magazine that's on the cusp?"  
20 MR. GORE: Uh-huh (yes).  
21 MR. CRAMPTON: And by "on the  
22 cusp," you mean what?  
23 MR. GORE: On the cusp I mean  
24 have --  
25 Q: (By Mr. Gore) Well, have you ever

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1 encountered a situation where you have a  
2 particular magazine and it's a close call?  
3 It's difficult to determine whether the  
4 readership is too young or whether it is --  
5 it's sufficiently -- or I don't know if this  
6 is done on a percentage basis or otherwise,  
7 or whether it's old enough that it's  
8 appropriate to advertise in that magazine.  
9 Have you encountered a specific instance of  
10 that?  
11 A: Well, let's start by saying let's keep one  
12 thing in mind, that we, again, do not look  
13 at any data that would report anybody under  
14 the age of 18 years of age associated with  
15 any magazine. I've said that once before.  
16 We use our best judgment, and our best  
17 judgment is based on the editorial content of  
18 the magazine.  
19 And then to answer your question  
20 directly, no, because anything that might  
21 even be questionable in the mind of our  
22 agency or in the mind of the media  
23 department would never ever come through as  
24 a recommendation to my desk.  
25 Q: Sports Illustrated then I -- because you --

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1 does Lorillard advertise in Sports  
2 Illustrated?  
3 A: Yes, it does.  
4 Q: So in your mind, that's not a questionable  
5 instance?  
6 A: Absolutely not.  
7 MR. GORE: Let's take -- can we  
8 take five minutes?  
9 MR. CRAMPTON: Sure.  
10 VIDEOGRAPHER: Off the record at  
11 2:11.  
12 [RECESS - 2:11 P.M. TO 2:25 P.M.]  
13 VIDEOGRAPHER: On the record at  
14 2:25.  
15 Q: (By Mr. Gore) Mr. Lindsley, have any  
16 magazines or periodicals, to your knowledge,  
17 refused to allow Lorillard to advertise in  
18 their publication?  
19 A: I'm not aware of any.  
20 Q: Does Lorillard distribute cigarette-related  
21 merchandise in the state of California?  
22 A: It has in the past, yes.  
23 Q: Does it do so presently?  
24 A: No, it does.  
25 Q: When did it stop?

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1 A: The last program was in -- sometime in 1997.  
2 Q: What program was that?  
3 A: I believe it was a program where the  
4 consumer smoker had to buy two packs of  
5 cigarettes for a Newport T-shirt.  
6 Q: Where in California was that program carried  
7 out?  
8 A: That program was carried out in a bunch of  
9 different markets across the country in the  
10 total marketing area, and I believe Los  
11 Angeles. And I'm not sure whether San  
12 Francisco was involved with that promotion or  
13 not.  
14 Q: Do you know how long that program lasted?  
15 A: It was a two-month program.  
16 Q: This was in -- do you know what months in  
17 1997?  
18 A: It was most likely during May and June.  
19 Q: Has Lorillard discontinued all distribution of  
20 cigarette-related merchandise in California?  
21 A: Yes, it has for 1998.  
22 Q: Is that just for the year 1998 or is it  
23 permanent, to your knowledge?  
24 A: I haven't worked on a 1999 program yet. It's  
25 currently for 1998 only.

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<p>1 Q: Do you know why its -- Lorillard is not 2 distributing cigarette-related merchandise in 3 California in 1998? 4 A: Yes, primarily because the dollars that were 5 associated with that kind of promotion we 6 needed to invest into other areas. 7 Q: Are you aware of any other programs 8 involving the distribution of 9 cigarette-related merchandise by Lorillard 10 other than the one you've already testified 11 about in 1997? 12 MR. CRAMPTON: In California? 13 MR. GORE: In California. 14 A: I believe that there was another program 15 that was buy a pack and get a lighter free. 16 Q: When was that program? 17 A: I believe that program was in either March 18 or April of 1997. 19 Q: Do you know where in California that program 20 took place? 21 A: I believe it was in Los Angeles. 22 Q: Any other programs -- similar programs in 23 1997? 24 A: No, no others. 25 Q: Same question for 1996.</p>	<p>1 in California? 2 A: Not that I'm aware of. 3 Q: Who is responsible -- strike that. 4 The distribution of cigarette-related 5 merchandise in conjunction with Lorillard 6 marketing and promotion programs, who does 7 that? Is it retailers? 8 A: Who physically does -- 9 Q: Like you buy two packs and you get a 10 T-shirt, who do you get the T-shirt from? 11 A: Well, the T-shirt is of course manufactured 12 by a manufacturer that produces T-shirts for 13 us. Those T-shirts are shipped to our 14 central distribution center; and then based 15 on orders by our sales department in the 16 field, those orders are shipped directly to 17 a division office where the field sales 18 representative picks them up and then goes 19 into the retail store with the display and 20 the product and the T-shirt and assembles 21 the display and puts the promotion on display 22 for the consumer. 23 Q: So from that point forward, it is the 24 retailer's responsibility to ensure that only 25 people over the legal age participate in the</p>
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<p>1 A: In 1996 there were a series of promotions 2 that again went into a variety of different 3 places across the country; and I believe 4 there was a hat promotion, buy two packs, 5 get a hat. There was a T-shirt -- another 6 T-shirt program: buy two packs, get a 7 T-shirt. There was another lighter promotion 8 I believe, too, with buy two packs and get a 9 lighter. 10 Q: Any others you can recall from 1996? 11 A: Not that I can recall. 12 Q: Who at Lorillard is primarily responsible for 13 Lorillard's programs involving 14 cigarette-related merchandise? 15 A: From a strategic standpoint, that would be 16 brand marketing. 17 Q: Who is head of brand marketing for Newport? 18 A: I am. 19 Q: That's the list that you gave us this morning 20 in your deposition? 21 A: Yes, sir. 22 Q: Other than the cigarette advertising code and 23 any applicable state or local law, are there 24 any limitations or restrictions on Lorillard's 25 distribution of cigarette-related merchandise</p>	<p>1 program, is that correct? 2 A: That's correct. 3 Q: Is it the brand marketing department's or 4 brand marketing heads at Lorillard who make 5 the decisions regarding the use of programs 6 involving the distribution of 7 cigarette-related merchandise? 8 A: Yes, it would be the responsibility of brand 9 marketing to make any recommendations on the 10 use of any programs for a specific brand. 11 Q: So, for example, brand marketing for Newport 12 is responsible for any form of promotion, 13 marketing, advertising including billboards, 14 free cigarettes, print advertising? They're 15 responsible for all promotional efforts for 16 that brand, is that correct? 17 A: They are responsible for the strategic 18 development and the approval of all of the 19 tactics for Newport, in this case, yes. 20 Q: The same would be true with respect to the 21 other supported brands that Lorillard has, 22 not just Newport? 23 A: That's true. 24 Q: Other than the cigarette advertising code and 25 any applicable local or state law, are there</p>

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1 any other efforts by Lorillard that have been  
2 made to avoid the distribution of  
3 cigarette-related merchandise to minors in  
4 California?  
5 A: No, there has not.  
6 Q: Has Lorillard ever distributed free  
7 cigarettes in California?  
8 MR. CRAMPTON: Objection to the  
9 term "free cigarettes." Although it  
10 seems easily defined, I think your  
11 definition may be different from Mr.  
12 Lindsley's definition.  
13 Q: What is your definition?  
14 A: My definition would be for free goods.  
15 Anything that is given to the consumer  
16 without a purchase requirement.  
17 Q: That's the same as mine.  
18 MR. CRAMPTON: Just so that's  
19 clear, that would not include a buy  
20 one, get one free.  
21 MR. GORE: I understand. I  
22 understand.  
23 Q: I guess I'm referring to mainly samples, is  
24 what I think of.  
25 A: Okay.

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1 Q: But I don't want to limit it to that. What  
2 I'm -- I'm referring to any exchange of  
3 cigarettes in which the end user or person  
4 receiving the cigarettes gets them without  
5 having to buy or do anything. Are we clear  
6 on that definition?  
7 A: Yes, we are clear.  
8 Q: Has Lorillard ever distributed free  
9 cigarettes in California?  
10 A: I believe that it has.  
11 Q: Do you know when it started doing that?  
12 A: I believe that we've been doing it since  
13 I've been around up until probably the end of  
14 1996 or some early part of 1997. So that  
15 would be approximately 17 years.  
16 Q: Did it stop in 1996 or 1997?  
17 A: We stopped in the early part of 1997, I  
18 believe.  
19 Q: Whose decision was it to stop?  
20 A: It was brand marketing's decision not to do  
21 it any longer.  
22 Q: Do you know why that decision was made?  
23 A: Yes, I do.  
24 Q: Why?  
25 A: For one, our event marketing program, which

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1 would then allow the distribution of samples  
2 to consumers, was not part of our 1997  
3 marketing program because those dollars were  
4 taken and reinvested into programs that we  
5 thought were more valuable to the sale of  
6 cigarettes at retail.  
7 And I believe we supported the Newport  
8 race car that we had for a period of time  
9 nationally through the Atlantic and Indy  
10 Light series through maybe the early part of  
11 1997. And there could have been one or two  
12 races in California at that time, and at  
13 those we would have handed out samples.  
14 I also believe that the sales  
15 department, which we defined yesterday, would  
16 be doing conversion work at retail; and that  
17 means that they would approach a smoker that  
18 was buying a competitive brand like a Kool  
19 smoker buying a pack of Kool and offer to  
20 them a free pack coupon for Newport that  
21 could be redeemed at the register in the  
22 retail store. And that program probably came  
23 to an end towards the end of 1997, and we no  
24 longer do that either.  
25 Q: Why was that program terminated?

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1 A: Because our sales force in the field had too  
2 much other things to do with our  
3 merchandising programs, which have changed  
4 drastically from what they had been before,  
5 and they needed time for that. And also our  
6 promotional programs on pack at retail became  
7 more extensive, and they needed to devote  
8 time to that as well, too. So again, the  
9 dollars taken for that program were  
10 readjusted and the time that it takes were  
11 readjusted back into work that was more  
12 effective and efficient to us in terms of  
13 selling cigarettes.  
14 Q: When you say your merchandising programs have  
15 changed drastically, have they changed  
16 drastically in the state of California?  
17 A: They've changed nationally drastically.  
18 Q: Can you describe for me briefly this drastic  
19 change in your merchandising programs?  
20 A: Well, we went from 1975 until June of 1997 --  
21 we had four carton plans and two pack  
22 programs. Our most current program now has  
23 six different carton plans and five different  
24 pack plans to be executed. So that alone is  
25 almost double the total number of different

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<p>1 types of merchandising plans we make 2 available to the field. 3 MR. CRAMPTON: I was just going 4 to point out this ought to sound 5 familiar to you. 6 MR. GORE: It just did. I -- it 7 does. I thought for a moment there we 8 were talking about something else. 9 Q: To your knowledge, do any state or local 10 laws in California prohibit or restrict the 11 distribution of free cigarettes? 12 A: I believe probably in every one there is some 13 type, either a total ban on handing out 14 samples or a modified ban, which means that 15 maybe in a private place that only an adult 16 can enter it might be acceptable. But I'm 17 not sure if that exists either. 18 Q: Again, as with other promotional activities, 19 Lorillard is guided by, limited by and 20 follows the cigarette advertising code and 21 state and local laws, is that correct, in 22 California? 23 A: Yes, sir. 24 Q: To your knowledge, has Lorillard ever 25 distributed free cigarettes at sporting</p>	<p>1 A: Yes, we have. 2 Q: What third-party contractors are those? 3 A: The third-party contract I'm referring to 4 came up also yesterday. They aren't in 5 California. They actually operate out of New 6 Jersey, and that contractor is called Always 7 Advertising. 8 Q: Same contractor that was used in 9 Massachusetts was also used in California? 10 A: Yes, sir. 11 Q: To the best of your knowledge, does Always 12 -- they don't have an office in California, 13 do they? 14 A: No, I don't believe that they do. 15 Q: Was there a set of instructions or 16 guidelines given by Lorillard to Always in 17 connection with the distribution of free 18 cigarettes in California? 19 A: Yes, there were. 20 Q: What guidelines were those? 21 A: Well, for one, those guidelines come out of 22 the advertising code that clearly specifies 23 how any form of sampling should be conducted 24 by either Lorillard or an outside -- a third 25 party, if you will, and the most -- we talked</p>
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<p>1 events in California? 2 MR. CRAMPTON: You mean beyond 3 what he may have already testified to? 4 MR. GORE: Yes. 5 A: Well, a sporting event in my mind would be 6 wherever the Newport race car might have been. 7 Q: I'm looking for events beyond that such as 8 football games, baseball games, basketball 9 games. 10 A: I don't believe so, and I don't really recall 11 going back years whether we have or not. 12 But I don't think that we have. 13 Q: Is there any person other than yourself who 14 would be more knowledgeable about Lorillard's 15 activities in that area? 16 A: I would say no, there wouldn't be. 17 Q: To your knowledge, has Lorillard ever 18 distributed free cigarettes at concerts -- 19 A: The answer -- 20 Q: -- in California? 21 A: Okay. The answer would be no, we haven't, 22 that I recall. 23 Q: Has Lorillard ever employed any third-party 24 contractors for the purpose of the 25 distribution of free cigarettes in California?</p>	<p>1 about this yesterday, too, I think a little 2 bit. The one that is most clear and most 3 important is identifying whether someone is a 4 smoker and also identifying whether or not 5 someone is of the appropriate age through the 6 use of proof of ID before any type of 7 sampling activity is conducted. 8 Q: Same guidelines that were given in 9 Massachusetts also given to Always in 10 California? 11 A: Yes, sir, and I think actually yesterday we 12 talked about it in the state of 13 Massachusetts, but I was talking about that 14 on a national basis because I think I've also 15 testified that I wasn't sure if we've ever 16 done -- or my knowledge was that we haven't 17 done any form of sampling activity like that 18 in the state of Massachusetts. 19 Q: Is there a document somewhere that is the 20 actual document given to third-party 21 contractors who are going to distribute free 22 cigarettes? 23 A: There is one, and I do believe that it really 24 is a list of what's in the advertising code, 25 just collated apart from everything else and</p>

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<p>1 handed to them. But there could be a couple</p> <p>2 additional pages, and I'm not sure what they</p> <p>3 are.</p> <p>4 MR. GORE: Counsel, do you know?</p> <p>5 MR. CRAMPTON: I'm sure we</p> <p>6 produced it, but I couldn't tell you</p> <p>7 where it is. We could take a look for</p> <p>8 it --</p> <p>9 MR. GORE: Do you know if --</p> <p>10 MR. CRAMPTON: -- and get it to</p> <p>11 you or try to identify where it is and</p> <p>12 let you know.</p> <p>13 Q: Do you know if this document has a name or a</p> <p>14 title or --</p> <p>15 A: I do know in the document that you just</p> <p>16 handed to me earlier, the one that's marked</p> <p>17 Exhibit 7, has agency sampling procedures</p> <p>18 here in the back. So, for one, it came from</p> <p>19 here; and I don't know what else there was</p> <p>20 attached.</p> <p>21 MR. CRAMPTON: Gay reminds me</p> <p>22 that there was a specific Minnesota</p> <p>23 request on sampling, so that would be</p> <p>24 an easy way to do a search using the</p> <p>25 index.</p>	<p>1 restrict distribution of sample cigarettes</p> <p>2 completely or that restrict it in some form.</p> <p>3 And the form of restriction would be that in</p> <p>4 public no; but in any type of environment</p> <p>5 that you could only enter if you are 18 or</p> <p>6 21 years of age or older where we could</p> <p>7 sample, we would if we were to sample.</p> <p>8 I know answered that -- I answered a</p> <p>9 question just like that a little while ago.</p> <p>10 So I'm confused as to what that question</p> <p>11 was, but there you have it.</p> <p>12 Q: Are you aware of any instances in which</p> <p>13 third-party contractors have failed to comply</p> <p>14 with regulations or guidelines provided by</p> <p>15 Lorillard in connection with the distribution</p> <p>16 of free cigarettes?</p> <p>17 MR. CRAMPTON: In California?</p> <p>18 MR. GORE: In California.</p> <p>19 A: No, I'm not aware of any.</p> <p>20 Q: Would you be the person most knowledgeable at</p> <p>21 Lorillard about that if that were to have</p> <p>22 happened?</p> <p>23 A: I would know if there are infringements, yes.</p> <p>24 Q: Has Lorillard ever conducted any analysis,</p> <p>25 study or evaluation regarding the</p>
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<p>1 MR. GORE: Okay. Thank you.</p> <p>2 Q: Are you aware of any local or state laws in</p> <p>3 California such as the 500-foot rule or</p> <p>4 1,000-foot rule that apply to the</p> <p>5 distribution of free cigarettes?</p> <p>6 A: Is this a different question than what you</p> <p>7 asked me a little while ago? Because I</p> <p>8 thought we covered this.</p> <p>9 Q: Well, there were different -- I think we were</p> <p>10 talking about different activities. At that</p> <p>11 time I meant to be referring to in-store</p> <p>12 displays or advertising -- point-of-sale</p> <p>13 advertising and whether you could do it, for</p> <p>14 example, inside a 7-11 store that was</p> <p>15 located within 1,000 feet of a school, a</p> <p>16 playground.</p> <p>17 A: Uh-huh (yes).</p> <p>18 Q: So now I'm asking are you aware of any</p> <p>19 similar laws that affect the distribution of</p> <p>20 free cigarettes?</p> <p>21 A: Again, I think that a little while ago I</p> <p>22 answered what I'm going to tell you again to</p> <p>23 the same question I believe, and that was</p> <p>24 that, yes, we do and that there are a full</p> <p>25 list of ordinances by county that either</p>	<p>1 effectiveness of distributing free cigarettes</p> <p>2 in California?</p> <p>3 A: No, we have not.</p> <p>4 Q: You have answered, in response to a couple of</p> <p>5 questions at least, that Lorillard has not</p> <p>6 undertaken to study or evaluate the</p> <p>7 effectiveness of a particular form of</p> <p>8 promotion of its products in California. Am</p> <p>9 I correctly paraphrasing your testimony?</p> <p>10 A: That we have not evaluated the effectiveness</p> <p>11 of a particular kind of promotion in the</p> <p>12 state of California?</p> <p>13 Q: That you haven't undertaken a study or some</p> <p>14 sort of analysis. Is the way that Lorillard</p> <p>15 evaluates the effectiveness of its marketing</p> <p>16 and advertising efforts just to look at where</p> <p>17 the promotional dollars were spent as</p> <p>18 compared to where the revenues came from?</p> <p>19 Is that how you decide how to shift</p> <p>20 advertising and marketing priorities from one</p> <p>21 year to the next?</p> <p>22 A: That type of thing is based on sales</p> <p>23 performance, yes, and also an evaluation of</p> <p>24 whether or not the total expenditures in the</p> <p>25 marketplace are appropriate to support either</p>

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<p>1 the current sales base or the growth of the 2 business. And we also made mention -- and 3 I'm not sure if it was today or yesterday, 4 but we talked about -- I think it was today 5 -- sales progress reports, that if there's a 6 new form of promotion or a new brand going 7 into the marketplace, that our field sales 8 people would be the ones to provide some 9 insight to us in terms of how effective that 10 is.</p> <p>11 But that's not a consumer research 12 study. That's simply whether or not they 13 can place the product, how -- you know, 14 whether or not when they went back it had 15 moved off of the display. So that is an 16 internal evaluation, but has nothing to do 17 with a consumer response or reaction to 18 anything new or current.</p> <p>19 Q: There was a new law passed in California 20 that went into effect on January 1, 1998 21 that you can no longer smoke inside 22 restaurants and bars. Are you aware of or 23 familiar with that law?</p> <p>24 A: I know it exists, yes.</p> <p>25 Q: Did you have the opportunity to study that</p>	<p>1 because we don't advertise in restaurants, 2 and we don't promote in restaurants.</p> <p>3 Q: Could you describe for me generally any 4 point-of-sale advertising campaigns engaged 5 in by Lorillard during the 1990s in the state 6 of California?</p> <p>7 MR. CRAMPTON: That question, I 8 assume, is to the extent those 9 campaigns might have been different 10 from the ones he described before?</p> <p>11 MR. GORE: Yes, this would be --</p> <p>12 Q: Well, I'd want -- if you did the same things 13 in California that you did in Massachusetts, 14 please let me know. If there's anything 15 new, different or additional, I'd like to 16 know that as well.</p> <p>17 MR. CRAMPTON: Actually, what I was 18 thinking of is you asked him about the 19 advertising campaigns for Newport and 20 other brands; and now you're asking 21 about point-of-sale advertising 22 campaigns, which -- what I was thinking 23 is I assume you're only asking him for 24 any campaigns that might have been 25 different from the general campaigns</p>
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<p>1 law before it was enacted, the proposed 2 legislation?</p> <p>3 A: I did not.</p> <p>4 MR. CRAMPTON: I object to this 5 line of questioning as being not 6 relevant and not reasonably calculated 7 to lead to the discovery of admissible 8 evidence. It's certainly outside of 9 the deposition notice.</p> <p>10 Q: Have you had an opportunity since January 1, 11 1998 to observe or study the effect of that 12 law on Lorillard's sales in California?</p> <p>13 A: I have not made an effort to determine if 14 that law has been a positive or a negative 15 impact on brand sales, if that's what you 16 mean.</p> <p>17 Q: Do you know whether anyone at Lorillard has 18 done that?</p> <p>19 A: I believe nobody at Lorillard has done that.</p> <p>20 Q: Do you know whether the passage of that 21 legislation has had any effect on Lorillard's 22 marketing and advertising efforts in 23 California?</p> <p>24 A: I would say that it has not had any effect on 25 Lorillard's advertising and promotion efforts</p>	<p>1 you elicited testimony on earlier.</p> <p>2 Q: I guess -- well, what I mean to be asking 3 about is any point-of-sale advertising, but I 4 don't want you to repeat something that 5 you've already told us about. Is there 6 anything different from or additional to what 7 you've already testified about?</p> <p>8 A: Can I ask you to define for me point-of-sale 9 advertising?</p> <p>10 Q: Well, is there a definition that you use or a 11 definition that is used at Lorillard? Does 12 point-of-sale advertising have a special 13 meaning within the company or within the 14 industry?</p> <p>15 A: Well, it has -- I don't -- I assume that the 16 industry will define it the same way, but I 17 can't testify to that. But as far as 18 Lorillard is concerned -- and this also came 19 up yesterday in terms of how these things 20 were defined -- point-of-sale advertising is 21 literally the poster that goes into the 22 window that has a certain message on it to 23 the consumer or the card that goes on top of 24 the display that has the same kind of message 25 or a different one or, you know, a clock</p>

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1 that hangs from the ceiling that might have a  
2 message on it. That's how I would define  
3 point-of-sale advertising, the point-of-sale  
4 piece with some form of communication on it  
5 to the consumer.

6 Q: Signs that are posted inside the windows of  
7 retailers in California, whose  
8 responsibility, if anyone's, is it to ensure  
9 that the placement and content of those  
10 signs complies with the cigarette advertising  
11 code and state and local law?

12 A: Well, I'm not sure that state and local law  
13 has anything to do with content. I think it  
14 has everything to do with placement, so I've  
15 got to separate the two issues.

16 If you talk about content, the content  
17 of any form of advertising, whether it's  
18 point-of-sale advertising or outdoor print  
19 advertising, is the responsibility of the  
20 brand marketing department and the individual  
21 brand groups in terms of determining what  
22 type of message might be there.

23 Keep in mind that the message that is in  
24 Massachusetts is the same one that's in  
25 California and probably the same one that's

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1 every place else unless it's promotion and  
2 there's a different promotion program in one  
3 place versus the other. So the brand  
4 marketing group is responsible for content.

5 As far as placement of that, either the  
6 placement agreement is between Lorillard and  
7 the field sales representative in terms of  
8 where a display is placed or where a poster  
9 is placed in a store, and if there are any  
10 types of restrictions locally, then it is up  
11 to the field sales representative along with  
12 the help of the retailer to be sure that  
13 things are placed in the appropriate location  
14 so that we're in compliance.

15 Q: Are you aware of any point-of-sale  
16 advertising engaged in by Lorillard in  
17 California during the 1990s that's different  
18 from what you already testified about  
19 yesterday in Massachusetts?

20 A: Are you talking about content again?

21 Q: No. Well, now I'm talking about just  
22 point-of-sale advertising in general. Did  
23 you have any different kinds of displays,  
24 posters, other promotional materials located  
25 within retail establishments?

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1 A: Well, that would depend on what type of  
2 merchandising programs are accepted by the  
3 retailers in Massachusetts versus the  
4 retailers in California. Just as an example,  
5 Massachusetts could be more of a pack state  
6 where you have more different types of pack  
7 merchandising plans versus California which  
8 might be a more carton driven marketplace,  
9 and therefore you have a greater variety or  
10 different types of carton programs --  
11 merchandising programs.

12 So I mean it would all depend. I mean  
13 not everything is equal. It depends on the  
14 retailers and what the retailers will accept  
15 in terms of merchandising plans and  
16 point-of-sale, but the content would be the  
17 same.

18 Q: Is what you've just described, the pack  
19 versus carton driven retail environment in  
20 Massachusetts and California -- is that in  
21 fact the case or were you speaking  
22 hypothetically?

23 A: I was speaking hypothetically.

24 Q: Are you the person most knowledgeable about  
25 the differences between point-of-sale

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1 advertising in Massachusetts versus  
2 California?

3 A: Okay. Yes, and I thought we already made it  
4 clear that there are no differences between  
5 point-of-sale advertising. I'm going back to  
6 the content, what's on there. Unless --

7 Q: I think -- right.

8 A: Unless the marketing program dictates a  
9 different kind of promotion in Massachusetts  
10 versus California, the content would be  
11 identical.

12 Q: I understand that the content would be  
13 identical. Are you personally aware of any  
14 differences in the marketing plan, anything  
15 specific that you can recall, differences  
16 between Massachusetts and California as far  
17 as the marketing plan, aside from content,  
18 during the 1990s?

19 A: Actually, I believe that for at least Newport  
20 that Massachusetts and parts of California  
21 have been pretty much in the same geographic  
22 category, meaning that they're either in tier  
23 one, two or three, or had been in either  
24 what they call the core or the non-core prior  
25 to that tier structure, which just is another

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1 way of defining divisions, that they were  
2 pretty much together for as long as I can  
3 remember. So that means that the marketing  
4 programs in general would be pretty similar  
5 to each other.  
6 Q: The tier program versus the core designation,  
7 what year was that change made?  
8 A: The tier designation has been in effect for  
9 a period of five, possibly as many as six  
10 years; and prior to that our divisions were  
11 broken down by core, non-core and everybody  
12 else.  
13 Q: What's the difference between core, non-core  
14 and everybody else?  
15 A: It's based on sales performance. Again, the  
16 core would be where our business was its  
17 strongest. The non-core would be where our  
18 business is showing some growth opportunities  
19 and the competitive frame is very strong; and  
20 the remainder of the U.S. would be basically  
21 everybody -- everything else that would be  
22 markets where Newport has very limited  
23 business opportunity and competitive brands  
24 don't exist.  
25 Q: When you say "everybody else," you're

1 referring to other tobacco companies?  
2 A: No, I'm referring to the competitive brands.  
3 Q: Competitive brands meaning?  
4 A: Meaning a Kool or a Salem.  
5 Q: Non-Lorillard brands?  
6 A: Non-Lorillard brands, yes.  
7 Q: So, for example, core might roughly  
8 correspond to tier one and non-core might be  
9 tier two or three, and then -- is that  
10 roughly how it works?  
11 A: I was hoping you'd finish because you were  
12 getting -- you know, it's pretty close to  
13 that. You can work in brand marketing for  
14 me if you'd like.  
15 Q: Why don't you do that.  
16 MR. CRAMPTON: You mean equate  
17 core or non-core?  
18 MR. GORE: No, finish the  
19 question, not work at brand marketing.  
20 Q: That's generally how it worked? It was in --  
21 A: Yes, sir.  
22 Q: -- terms of strength of markets for various  
23 brands?  
24 A: Yes, sir.  
25 Q: Do you know the reason for the change from

1 the core to the tier designation?  
2 A: Yes, it just gave us a better opportunity to  
3 further segment the marketplace based on  
4 different -- or new issues in the  
5 marketplace, and that new issue is basically  
6 the influence of discount brands. As it  
7 became more important, we had to take them  
8 into account in looking at the geographic  
9 segmentation. So it just turned out to  
10 break down core, non-core and remainder U.S.  
11 into five tiers instead.  
12 Q: Is it possible, running the same computer  
13 program that you testified about earlier, to  
14 determine the amount of monies spent in  
15 California by Lorillard on point-of-sale  
16 advertising?  
17 A: The answer would be no, it isn't possible.  
18 Q: It is not possible?  
19 A: It is not possible.  
20 Q: Why is that?  
21 A: Because literally you would have to go  
22 through every single requisition from every  
23 single division around the country and hand  
24 select and pull out the number of  
25 point-of-sale pieces that they requested for

1 a period of time and add them all together;  
2 and when you're dealing with two regions and  
3 so many divisions and so many sales reps, it  
4 would be an unfair request to have them, nor  
5 do I know that they keep those type of  
6 records -- have them to go back and actually  
7 hand pull all this information.  
8 And if anything, it could only be done  
9 for a current year; and I assume that those  
10 type of records don't exist or are not  
11 readily accessible to anyone to do.  
12 Q: Is it not accurate to say that ultimately  
13 everything that all Lorillard sales reps do  
14 all the way up to the top of the  
15 organization is entered into a database and  
16 kept track of, every expense, every sale,  
17 every requisition, everything in total?  
18 A: Well, actually, that's not the case, although  
19 we're moving that way. But our sales  
20 department -- our sales force in the field  
21 are not fully automated. They will be. At  
22 the end of this year they'll have hand-held  
23 computers where they can punch in numbers  
24 that can be instantly reported up.  
25 Right now what they're doing is they're

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1 writing it on a piece of paper, and some of  
2 that is being captured. But most of that  
3 information can't be captured, so you would  
4 have to go through boxes and boxes of paper  
5 to generate the number of items and things  
6 that they request.

7 MR. GORE: I'm getting reasonably  
8 close. I'm going to estimate that --  
9 what time did you say your flights  
10 were, at 6:05 or --

11 MR. CRAMPTON: 6:10.

12 MR. GORE: 6:10? I'm definitely  
13 going to be done no later than 4:30 and  
14 possibly by 4:00. Is it okay if we  
15 take a break for a few minutes?

16 MR. CRAMPTON: Sure.

17 MR. GORE: Thanks.

18 VIDEOGRAPHER: Off the record at  
19 3:04.

20 [RECESS - 3:04 P.M. TO 3:18 P.M.]

21 VIDEOGRAPHER: This is the  
22 beginning of tape four of the  
23 deposition of Victor D. Lindsley.  
24 We're on the record at 3:16 -- I'm  
25 sorry, 3:18.

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1 Q: (By Mr. Gore) Mr. Lindsley, are there any  
2 steps taken by Lorillard to monitor or verify  
3 compliance by retailers with respect to their  
4 observance of the cigarette advertising code  
5 or local or state law in conducting  
6 point-of-sale promotion of Lorillard brands?

7 MR. CRAMPTON: Retailer? Are you  
8 talking about retailers' compliance  
9 with the cigarette advertising code?

10 MR. GORE: Yes.

11 MR. CRAMPTON: You many answer the  
12 question.

13 A: I'm not quite sure how to answer that  
14 question.

15 Q: Let me rephrase it. Are there any steps  
16 taken by Lorillard to ensure compliance by  
17 retailers with state or local law pertaining  
18 to the sale of tobacco products in  
19 connection with Lorillard's point-of-sale  
20 promotion?

21 A: This I believe was something we discussed a  
22 little bit earlier as well, too, and the  
23 testimony I gave was that our field sales  
24 representative visiting these stores on a  
25 regular basis, if there was anything that was

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1 clearly in violation of any kind of an  
2 ordinance, would feel and be obligated to  
3 pass on that information to their superior,  
4 the divisional sales manager, as it relates  
5 to the sale of our own products and our  
6 displays and our contracts with the retailer  
7 as well as -- now I'm assuming, as well as  
8 any disregard on the part of the retailer to  
9 place a point-of-sale piece that we have  
10 placed over here in the window when it's not  
11 supposed to be there.

12 Q: Is it accurate to say that that type of  
13 communication arrangement between the sales  
14 rep and the manager with respect to what's  
15 going on at the retail level is in place and  
16 which is followed with any form of promotion  
17 that Lorillard does through its retailers?

18 A: Yes, sir.

19 Q: It seems that way, and it seems --

20 A: They are our eyes and ears. They're out  
21 there every day, and they work retailers  
22 every day, and they have the best knowledge  
23 of what happens out there.

24 Q: Are you aware of any specific instances in  
25 the state of California where a sales rep

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1 has reported to Lorillard that a local -- not  
2 local, that a retailer was in some way  
3 violating state or local law with respect to  
4 the sale or distribution of tobacco products?

5 A: I'm not aware of any.

6 Q: Is there anyone else at Lorillard who would  
7 be more knowledgeable than yourself about any  
8 such instances?

9 A: Yes, I believe that the division manager or  
10 the regional sales manager in the field  
11 would be able to -- would have a better  
12 understanding of anything like that that  
13 might have happened.

14 Q: That would be the regional sales manager in  
15 each respective region, there being two  
16 regions in California?

17 A: Yes, or more specifically the division  
18 manager. The one that runs the division  
19 would know about that firsthand.

20 Q: How does -- strike that.

21 Other than what is described in the  
22 summaries that you provided to us of  
23 Lorillard's merchandising programs in  
24 Exhibits 2 and 3, how does Lorillard decide  
25 which retailers -- in which retailers it will

1 place point-of-sale advertising?  
2 A: Well, point-of-sale advertising is placed  
3 based on the retailer's desire or approval to  
4 place it if they're not already part of a  
5 merchandising plan like you have in front of  
6 you which specifically details when and when  
7 not to place permanent types of  
8 point-of-sale. Our displays that go onto the  
9 counter -- our permanent displays that go  
10 onto the counter carry along with it a riser  
11 card. So all of those displays would carry a  
12 riser card.

13 If it's a location where we do not have  
14 a permanent merchandising plan and we can put  
15 in a temporary display, that temporary  
16 display, which would be used primarily to  
17 support a promotion -- a temporary promotion  
18 in-store, would also carry a riser card that  
19 would communicate to the consumer an offer.

20 If there's any types of point-of-sale  
21 beyond that placed in a store like a poster  
22 in a window, it would be up to the  
23 discretion of the retailer to -- either to  
24 allow us to or tell us that they don't want  
25 any of that stuff in their window or on

1 Q: Your placement then would be limited only by  
2 any applicable state or local law, is that  
3 correct?  
4 A: That, along with if there's a merchandising  
5 agreement, what that states in terms of  
6 where we can place something or we agree we  
7 can place something, or based on whether or  
8 not the retailer wants us to place anything  
9 in their store beyond just the display with  
10 the promotion.

11 Q: To your knowledge, has Lorillard ever  
12 sponsored any sporting events in California?

13 A: No. I stated also yesterday that on a  
14 national basis Lorillard has not sponsored a  
15 sporting event with the exception of the  
16 Kent Gold Lights tournament, which is 25  
17 years back or 30 years back, somewhere in  
18 the Northeast. But we have, up until the  
19 middle part of 1997, sponsored a race car.  
20 But that is not a sporting event.

21 Q: Do you know whether that race car has raced  
22 in races in California?

23 A: Yes, it has.

24 Q: Do you know when it raced in California?

25 A: I believe from the very beginning there was

1 their counter. So that would be dictated by  
2 the specific retailer.

3 Q: What is a riser card?

4 A: The riser card is the card that is physically  
5 attached to the top of the display by our  
6 field sales representatives.

7 Q: And it displays the brand name or logo or  
8 other promotional information?

9 A: Any of the above.

10 Q: Are there any restrictions either in the  
11 cigarette advertising code or in state and  
12 local law in California that you are aware  
13 of on the placement of point-of-sale  
14 advertising in retail outlets in proximity to  
15 schools, playgrounds and churches?

16 MR. CRAMPTON: Objection. Asked  
17 and answered and asked and answered.

18 Q: Do you understand the question?

19 A: Yes. I was going to state again that you  
20 did ask this before as well and that my  
21 testimony was that if the retailer has a  
22 right to sell tobacco products in their store  
23 and will accept a merchandising display or  
24 promotion from us, we have the right to  
25 place it there.

1 a series of places involved with the  
2 Atlantic racing series and I believe even  
3 the Indy Light series that had a venue in, I  
4 believe, San Diego. It wasn't all the time.  
5 It was whenever that particular race came up.

6 Q: When you say "from the very beginning," what  
7 year are you talking about?

8 A: Oh, I'm going to say that the race car  
9 program was in place from the early part of  
10 1990 up until 19 -- I think middle part of  
11 1997.

12 Q: Was it discontinued in the middle of 1997?

13 A: It was discontinued.

14 Q: In California or nationally?

15 A: It was discontinued nationally.

16 Q: Do you know why it was discontinued?

17 A: Yes, I do know why.

18 Q: Why?

19 A: Well, because it wasn't an efficient use of  
20 dollars primarily.

21 Q: Do you know whose decision it was to  
22 terminate it?

23 A: It was a decision between brand marketing and  
24 the president of the company.

25 Q: Other than this race car having raced in

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1 California, are you aware of Lorillard ever  
2 having sponsored any sporting events or  
3 concerts in the state of California?  
4 MR. CRAMPTON: Objection to the  
5 form.  
6 A: I'm not aware of any.  
7 Q: Is there anyone at Lorillard other than  
8 yourself who would be more knowledgeable  
9 about any sponsorship by Lorillard of  
10 sporting events or concerts in California?  
11 A: No, there would not be.  
12 Q: Does Lorillard do any advertising in catalogs  
13 that are distributed in California?  
14 A: It does not.  
15 Q: Has it ever done so?  
16 A: Possibly the gold star program for Old Gold  
17 years and years and years ago, going back I  
18 guess 30, 40 years ago. California might  
19 have been part of that particular program;  
20 but other than that, absolutely nothing that  
21 I can recall.  
22 Q: Is there anyone else other than yourself at  
23 Lorillard who would be more knowledgeable  
24 about any catalog advertising in California?  
25 A: No.

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1 Q: Has Lorillard ever conducted any type of  
2 marketing research in California?  
3 MR. CRAMPTON: Objection. Let's  
4 be clear what marketing research is,  
5 especially if it's distinct from market  
6 research.  
7 MR. GORE: Okay.  
8 Q: Could you define the difference between those  
9 two terms as you use them?  
10 A: Well, I think we call marketing research  
11 anything that we would do to find out about  
12 smokers' preferences as it relates to either  
13 a current Lorillard brand or as it relates to  
14 the introduction of something new. That  
15 would include demographic profiles of the  
16 brands and switching behavior, meaning what  
17 they smoked before, what they smoke now.  
18 Market research would be something in  
19 my mind that the marketing group does all the  
20 time; and that would be a look at sales  
21 performance on a market-by-market basis for  
22 both our brands, competitive brands, and  
23 overall category information.  
24 Q: Then taking the first one, has Lorillard ever  
25 done any marketing research in California?

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1 A: In the state of California, not that I can  
2 recall. We talked about this earlier, too,  
3 in terms of marketing research; and I  
4 indicated that each brand would have a  
5 marketing research plan that would address  
6 the specific needs of that specific brand  
7 and that there could be some people in the  
8 state of California that would be part of a  
9 bigger sample of people.  
10 And that information would be reported  
11 as a total sample, because the individual  
12 area would not be sufficient enough in size  
13 in order to give you any directional  
14 information. So we'd use the total sample  
15 to get some insight into something.  
16 Q: Same question with respect to focus groups.  
17 To your knowledge, has Lorillard ever  
18 conducted research involving the use of focus  
19 groups in California?  
20 A: You know, I believe that we have over the  
21 years; but I can't remember specifically what  
22 brand -- although I think it was most likely  
23 Newport -- and what the project assignment  
24 was.  
25 Q: Who would know about this?

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1 A: I'm not sure anyone currently at Lorillard  
2 would know about it.  
3 Q: Do you know -- other than what you've  
4 testified to, can you recall anything about  
5 focus group activities in California?  
6 A: No, I can't recall anything specifically.  
7 Q: Has Lorillard ever done any research in  
8 California via telephone interviews?  
9 A: Again, it goes back to my overall comment --  
10 or testimony just a little while ago that as  
11 part of a larger study, if the research  
12 methodology was telephone interviews and  
13 California was part of the total sample,  
14 then yes, we would do a number of telephone  
15 interviews in the state of California. And,  
16 again, that information would be reported as  
17 part of the total sample.  
18 Q: When these larger studies are done, in what  
19 form is the information compiled?  
20 A: Well, the report that I get would be a --  
21 what they call, you know, a top-line report.  
22 That would be a written review of what the  
23 project was, what the methodology was and  
24 what the key findings from the study were;  
25 and attached to that might be a chart or two

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1 that would show you in detail that  
2 information.  
3 Q: And it's called a top-line report?  
4 A: It would be called --  
5 Q: Is that the --  
6 A: Yeah, yeah. It would be called --  
7 Q: Is that the name of it?  
8 A: -- just the results. Yeah, the type of  
9 thing. It could be a top-line report or  
10 results report.  
11 Q: How often do you receive such reports?  
12 A: Well, as often as we do market research -- or  
13 marketing research.  
14 Q: How often did you conduct marketing research  
15 in 1997?  
16 A: I don't recall any brand in 1997 that did  
17 some form of marketing research, although I  
18 will say that there were a couple of  
19 advertising research studies for Maverick  
20 sometime during the year, but I don't know  
21 the details of those.  
22 Q: What about for 1996?  
23 A: I honestly can't recall exactly what we did  
24 in 1996.  
25 Q: 1995?

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1 A: I couldn't go back any further than 1998.  
2 Q: Shifting gears to market research, has  
3 Lorillard ever conducted any market research  
4 in the state of California?  
5 A: In the state per se, no, but Lorillard on a  
6 daily basis or a monthly basis will conduct  
7 market research on sales performance of our  
8 brands through the use of MSA or through the  
9 use of Excel or through the use of IRI  
10 supermarket scanner data. So that is a  
11 regular thing. That is keeping pulse on how  
12 our business is performing on a division  
13 basis.  
14 Again, we said before that that  
15 information is not reported on a state basis,  
16 but it is reported on a division basis or on  
17 a regional basis or on an area basis.  
18 Q: When you say "regional" and then "area  
19 basis," what's an area?  
20 A: An area is a compilation of a bunch of  
21 different regions all together.  
22 Q: Are there -- on this map that you testified  
23 about earlier, are there areas outlined on  
24 the map that encompass various regions?  
25 A: Yes, the map will be separated into five

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1 areas, and within each area you'll see the  
2 regions clearly defined.  
3 Q: Five areas within the United States?  
4 A: Yes, sir.  
5 Q: Is there an area manager for each manager?  
6 A: There is an area director for each area.  
7 Q: The two regions in California, do you know  
8 what area they fall into?  
9 A: They are in area four.  
10 Q: What other states -- what parts of states  
11 are within area four?  
12 A: It's a good part -- without mentioning  
13 states, I think Montana and Idaho. It's  
14 really the northwestern tier of the country  
15 through -- following it all the way down into  
16 Arizona, including California, the full state.  
17 Q: Does it include Washington and Oregon?  
18 A: It includes Washington, Oregon, then  
19 everything to the east of that, follow it all  
20 the way down to Arizona and then all the way  
21 across to the coast.  
22 Q: The head of the area is called, the head  
23 person, area manager?  
24 A: Area director.  
25 Q: Area director. Who is the area director for

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1 area number four?  
2 A: The current area director's name is Joe  
3 Farnham.  
4 Q: How do you spell Farnham?  
5 A: F-a-r-n-h-a-m.  
6 Q: Where is the head office of area four located?  
7 A: It's in Los Angeles.  
8 Q: Has Lorillard ever conducted any research in  
9 California concerning consumer attitudes  
10 toward smoking and health?  
11 A: No, we have not.  
12 Q: Has Lorillard ever conducted any research in  
13 California regarding underage smoking?  
14 A: Lorillard has not.  
15 Q: Has Lorillard ever conducted any research in  
16 California on the effect of California laws or  
17 statutes on Lorillard's business?  
18 A: I believe also that was a question you asked  
19 before, and my testimony then was no, we do  
20 not.  
21 Q: You're smiling. I want to make sure I'm  
22 getting --  
23 A: You're getting the right answer. We have  
24 not.  
25 MR. CRAMPTON: I'm not sure

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<p>1 exactly what it is you're thinking of. 2 Before you asked about the statute that 3 went into effect -- 4 MR. GORE: That particular year. 5 MR. CRAMPTON: -- 1/19/98. 6 MR. GORE: Right. 7 MR. CRAMPTON: This is a different 8 question? 9 MR. GORE: Well, let me rephrase 10 it. 11 Q: (By Mr. Gore) What I'm asking is, at any 12 point in time, has Lorillard ever conducted 13 any sort of research regarding the effect of 14 any California statute or any local ordinance 15 in California on Lorillard's business in 16 California? 17 A: No, we have not. And I was referring before 18 to the one about the no smoking in 19 restaurants. 20 Q: Okay. 21 A: Okay. And I assume when you say "research," 22 you're talking about consumer research. 23 Q: Research of any kind. 24 A: Well, sales analysis is a form of research, 25 and we do that all the time.</p>	<p>1 MR. GORE: Well, that's probably 2 a good idea. 3 Q: Do you have a personal definition of 4 addictive -- what the word "addictive" means? 5 A: No, I do not. 6 Q: Do you have an understanding of what the word 7 "addictive" means at Lorillard? 8 A: I do not. 9 Q: Is it your testimony that the word 10 "addictive" doesn't mean anything to you? 11 Is that correct? 12 A: As it relates to what? 13 Q: As it relates to any substance that may be 14 addictive? 15 A: I mean, everybody has a definition of what 16 the word "addictive" might mean, but are you 17 -- what are you applying it to? 18 Q: I'm asking what is your definition of 19 addictive? 20 A: Addictive to me would be something that a 21 person can't stop doing possibly without help. 22 MR. CRAMPTON: I want to just 23 state for the record here that this 24 witness is not speaking for the company 25 on the term "addiction." I understand</p>
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<p>1 Q: That's the market research that you testified 2 about a few minutes ago? 3 A: Yes. That was how we define market 4 research, yes. 5 Q: I'm referring to something more -- something 6 outside of that which is done on a regular 7 daily basis like a study, something that is 8 specifically undertaken over a limited period 9 of time looking for specific results, not a 10 regular part of the daily business. 11 A: The answer is no. 12 Q: In the formulation of Lorillard's marketing 13 and advertising plans, does the issue of 14 whether smoking is or is not addictive come 15 into play or is it taken into consideration 16 in any way? 17 MR. CRAMPTON: I think that 18 question -- it probably doesn't matter 19 the way you've said that, but what the 20 definition of addictive is. If you -- 21 if it makes a difference to you what 22 the definition is, then you should 23 clarify that because you and the 24 witness may not have the same 25 definition.</p>	<p>1 that you need to have some sort of 2 framework if you've got a question that 3 is relevant to this deposition. That's 4 fine, but I don't want you to think 5 that you're getting the testimony of 6 Lorillard Tobacco Company on what the 7 definition of addiction is or should be 8 when you're asking this question. 9 MR. GORE: I understand that 10 clearly. 11 Q: With that in mind, with the definition of 12 addiction that you just gave, does the issue 13 of whether cigarettes are or are not 14 addictive -- does that come into play or is 15 it given any consideration in the formulation 16 of Lorillard's marketing and advertising 17 plans? 18 A: No, it does not, because my job is to write 19 and develop marketing plans for people who 20 choose to smoke and people who are of age to 21 smoke. 22 Q: To your knowledge, has Lorillard ever 23 marketed a particular brand of cigarette as 24 a healthier or safer cigarette? 25 A: Not that I'm aware of.</p>

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1 Q: Has Lorillard ever run any kind of campaign  
2 intended to lessen public concern about  
3 smoking?  
4 MR. CRAMPTON: Objection. Vague  
5 and ambiguous. Outside the scope of  
6 the notice.  
7 A: Repeat that, please.  
8 MR. GORE: Could you read back the  
9 question, please?  
10 [QUESTION READ BACK AS REQUESTED]  
11 A: The answer is no:  
12 Q: To your knowledge, has Lorillard ever run any  
13 kind of campaign designed to promote the  
14 idea that whether smoking is good or bad to  
15 your health is a controversy?  
16 A: Not that I'm aware of.  
17 Q: To your knowledge, has Lorillard ever  
18 attempted to market or advertise its  
19 cigarettes as safer than the cigarettes  
20 marketed by its competitors?  
21 A: No.  
22 MR. GORE: I think I'm just about  
23 done. If you can give me about five  
24 minutes to check through my notes, I  
25 think then we'll be about wrapped up.

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1 VIDEOGRAPHER: Off the record at  
2 3:46.  
3 [RECESS - 3:46 P.M. TO 4:00 P.M.]  
4 VIDEOGRAPHER: On the record at  
5 4:00.  
6 MR. GORE: I have concluded my  
7 examination of Mr. Lindsley.  
8 MR. CRAMPTON: We don't have any  
9 questions here, so I guess we're  
10 adjourned.  
11 MR. GORE: All right.  
12 VIDEOGRAPHER: Off the record at  
13 4:00.  
14  
15 [WITNESS DISMISSED AT 4:00 P.M.]

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I have read the foregoing pages which contain a  
correct transcription of the answers given by me to the  
questions herein recorded. My signature is subject to  
corrections on the attached errata sheet, if any.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

Victor D. Lindsley

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_,  
1998.

Notary Public

My commission expires:

(seal)

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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

C E R T I F I C A T E

I, Edith B. Chiavatti, notary public/court reporter,  
do hereby certify that the above-named was duly sworn by me  
prior to the taking of the foregoing deposition; and that  
said deposition was taken and transcribed under my  
supervision; and that the foregoing pages, inclusive,  
constitute a true and accurate transcription of the  
testimony of the witness.

I do further certify that the persons were present as  
stated in the caption.

I do further certify that I am not of counsel for or  
in the employment of either of the parties to this action,  
nor am I interested in the results of this action.

IN WITNESS WHEREOF, I have hereunto subscribed my name  
this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

Notary Public

My commission expires:

July 15, 1999



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